

EXECUTIVE WATER TASK FORCE

APPROVALS

May 31, 2012

HB 368 Abandonment or Forfeiture of Water Rights
Approved as attached

HB 486 Water and Irrigation Amendments
Approved as written

73-3-18 Administrative Priority Modifications
Approved as attached
Fixed Time Application Proposal
Approved as attached

June 21, 2012

Deed Addendum Proposal
Approved as attached (see Boyd C. for final/correct copy)

July 12, 2012

Changes to 73-5-13 Diligence Claim Proposal
Boyd Clayton will forward final copy to Tracy Nuttall
HB369 General Adjudication Statutes
Ward Wagstaff will forward final copy to Tracy Nuttall

August 7, 2012

9-8-404 to Exempt SE for Archeological decisions
Boyd Clayton to work with Tracy Nuttall on language
Change Application Modifications (8/7/12 Draft)
League may have input still to come

September 10, 2012

73-1-11 Conveyance by Appurtenance
Boyd Clayton to forward final copy to Tracy Nuttall
Canal Procedure
Steve Clyde to provide Tracy Nuttall with language
Change Application Modifications - Comments heard
Approval of 8/7/12 stands
Proposal to Clarify Nonuse Application Effect
Boyd Clayton to forward final copy to Tracy Nuttall

ABANDONMENT OR FORFEITURE OF WATER RIGHTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad J. Galvez

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill modifies provisions regarding forfeiture of a water right under Title 73, Water and Irrigation.

Highlighted Provisions:

This bill:

- ▶ prohibits the state engineer from asserting forfeiture of a water right in a proposed determination of rights if the period of nonuse did not occur or end during a certain period;

- ▶ bars an assertion of forfeiture regarding a water right subject to a proposed determination if the assertion is not made by the state engineer in the proposed determination or by a person in an objection to the proposed determination;

- ▶ subjects a water right found to be valid in a decree adjudicating a general determination of water rights to a claim of forfeiture based on a period of nonuse that begins after the state engineer files the related proposed determination of rights with the court; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **73-1-4**, as last amended by Laws of Utah 2009, Chapter 388



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

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

34 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
35 **seven years -- Nonuse application.**

36 (1) As used in this section:

37 (a) "Public entity" means:

38 (i) the United States;

39 (ii) an agency of the United States;

40 (iii) the state;

41 (iv) a state agency;

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

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

44 (b) "Public water supplier" means an entity that:

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

47 (ii) is:

48 (A) a public entity;

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

51 (C) a community water system:

52 (I) that:

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

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

55 (II) whose voting members:

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

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

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

61 (D) a water users association:

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

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

65 (c) "Shareholder" is as defined in Section 73-3-3.5.

66 (d) "Water company" is as defined in Section 73-3-3.5.

67 (e) "Water supply entity" means an entity that supplies water as a utility service or for
68 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) When an appropriator or the appropriator's successor in interest abandons or
74 ceases to use all or a portion of a water right for a period of seven years, the water right or the
75 unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c),
76 unless the appropriator or the appropriator's successor in interest files a nonuse application
77 with the state engineer.

78 (b) (i) A nonuse application may be filed on all or a portion of the water right,
79 including water rights held by a water company.

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

82 (c) (i) ~~[A] Except as provided in Subsection (2)(c)(ii), a water right or a portion of the~~
83 ~~water right may not be forfeited unless a judicial action to declare the right forfeited is~~
84 ~~commenced within 15 years from the end of the latest period of nonuse of at least seven years.~~

85 ~~[(ii) If forfeiture is asserted in an action for general determination of rights in~~
86 ~~conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year~~
87 ~~limitation period shall commence to run back in time from the date the state engineer's~~
88 ~~proposed determination of rights is served upon each claimant.]~~

89 ~~[(iii) A decree entered in an action for general determination of rights under Chapter 4,~~

90 ~~Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any~~
91 ~~right determined to be valid in the decree, but does not bar a claim for periods of nonuse that~~
92 ~~occur after the entry of the decree.]~~

93 ~~[(iv) A proposed determination by the state engineer in an action for general~~
94 ~~determination of rights under Chapter 4, Determination of Water Rights, bars a claim of~~
95 ~~forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has~~
96 ~~been filed within the time allowed in Chapter 4, Determination of Water Rights.]~~

97 (ii) (A) The state engineer, in a proposed determination of rights prepared in
98 accordance with Section 73-4-11, may not assert that a water right was forfeited unless a period
99 of nonuse of seven years occurs or ends during the 15-years immediately preceding the day on
100 which the state engineer files the proposed determination of rights with the court.

101 (B) After the day on which a proposed determination of rights is filed with the court, a
102 person may not assert that a water right subject to that determination was forfeited during the
103 15-year period described in Subsection (2)(c)(ii)(A) unless the state engineer asserts forfeiture
104 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an
105 objection to the proposed determination.

106 (iii) A water right, found to be valid in a decree entered in an action for general
107 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
108 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
109 engineer filed the related proposed determination of rights with the court, unless the decree
110 provides otherwise.

111 ~~[(v)]~~ (iv) If in a judicial action a court declares a water right forfeited, on the date on
112 which the water right is forfeited:

113 (A) the right to use the water reverts to the public; and

114 (B) the water made available by the forfeiture:

115 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

116 and

117 (II) second, may be appropriated as provided in this title.

118 (d) This section applies whether the unused or abandoned water or a portion of the
119 water is:

120 (i) permitted to run to waste; or

- 121 (ii) used by others without right with the knowledge of the water right holder.
- 122 (e) This section does not apply to:
 - 123 (i) the use of water according to a lease or other agreement with the appropriator or the
 - 124 appropriator's successor in interest;
 - 125 (ii) a water right if its place of use is contracted under an approved state agreement or
 - 126 federal conservation fallowing program;
 - 127 (iii) those periods of time when a surface water or groundwater source fails to yield
 - 128 sufficient water to satisfy the water right;
 - 129 (iv) a water right when water is unavailable because of the water right's priority date;
 - 130 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
 - 131 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
 - 132 (A) the water is stored for present or future use; or
 - 133 (B) storage is limited by a safety, regulatory, or engineering restraint that the
 - 134 appropriator or the appropriator's successor in interest cannot reasonably correct;
 - 135 (vi) a water right if a water user has beneficially used substantially all of the water right
 - 136 within a seven-year period, provided that this exemption does not apply to the adjudication of a
 - 137 water right in a general determination of water rights under Chapter 4, Determination of Water
 - 138 Rights;
 - 139 (vii) except as provided by Subsection (2)(g), a water right:
 - 140 (A) (I) owned by a public water supplier;
 - 141 (II) represented by a public water supplier's ownership interest in a water company; or
 - 142 (III) to which a public water supplier owns the right of use; and
 - 143 (B) conserved or held for the reasonable future water requirement of the public, which
 - 144 is determined according to Subsection (2)(f);
 - 145 (viii) a supplemental water right during a period of time when another water right
 - 146 available to the appropriator or the appropriator's successor in interest provides sufficient water
 - 147 so as to not require use of the supplemental water right; or
 - 148 (ix) a water right subject to an approved change application where the applicant is
 - 149 diligently pursuing certification.
 - 150 (f) (i) The reasonable future water requirement of the public is the amount of water
 - 151 needed in the next 40 years by the persons within the public water supplier's projected service

152 area based on projected population growth or other water use demand.

153 (ii) For purposes of Subsection (2)(f)(i), a community water system's projected service
154 area:

155 (A) is the area served by the community water system's distribution facilities; and

156 (B) expands as the community water system expands the distribution facilities in
157 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

158 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
159 Subsection (2)(e)(vii) applies if:

160 (i) the public water supplier submits a change application under Section 73-3-3; and

161 (ii) the state engineer approves the change application.

162 (3) (a) The state engineer shall furnish a nonuse application form requiring the
163 following information:

164 (i) the name and address of the applicant;

165 (ii) a description of the water right or a portion of the water right, including the point of
166 diversion, place of use, and priority;

167 (iii) the quantity of water;

168 (iv) the period of use;

169 (v) the extension of time applied for;

170 (vi) a statement of the reason for the nonuse of the water; and

171 (vii) any other information that the state engineer requires.

172 (b) (i) Filing the nonuse application extends the time during which nonuse may
173 continue until the state engineer issues an order on the nonuse application.

174 (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse
175 from the application's filing date until the approved application's expiration date.

176 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
177 application once a week for two successive weeks:

178 (A) in a newspaper of general circulation in the county in which the source of the water
179 supply is located and where the water is to be used; and

180 (B) as required in Section 45-1-101.

181 (ii) The notice shall:

182 (A) state that an application has been made; and

183 (B) specify where the interested party may obtain additional information relating to the
184 application.

185 (d) Any interested person may file a written protest with the state engineer against the
186 granting of the application:

187 (i) within 20 days after the notice is published, if the adjudicative proceeding is
188 informal; and

189 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
190 formal.

191 (e) In any proceedings to determine whether the nonuse application should be approved
192 or rejected, the state engineer shall follow the procedures and requirements of Title 63G,
193 Chapter 4, Administrative Procedures Act.

194 (f) After further investigation, the state engineer may approve or reject the application.

195 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
196 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
197 for nonuse.

198 (b) A reasonable cause for nonuse includes:

199 (i) a demonstrable financial hardship or economic depression;

200 (ii) the initiation of water conservation or efficiency practices, or the operation of a
201 groundwater recharge recovery program approved by the state engineer;

202 (iii) operation of legal proceedings;

203 (iv) the holding of a water right or stock in a mutual water company without use by any
204 water supply entity to meet the reasonable future requirements of the public;

205 (v) situations where, in the opinion of the state engineer, the nonuse would assist in
206 implementing an existing, approved water management plan; or

207 (vi) the loss of capacity caused by deterioration of the water supply or delivery
208 equipment if the applicant submits, with the application, a specific plan to resume full use of
209 the water right by replacing, restoring, or improving the equipment.

210 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
211 notify the applicant by mail or by any form of electronic communication through which receipt
212 is verifiable, of the date when the nonuse application will expire.

213 (b) An applicant may file a subsequent nonuse application in accordance with this

214 section.

Legislative Review Note
as of 2-15-12 8:09 AM

Office of Legislative Research and General Counsel

1 **WATER AND IRRIGATION AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Neal B. Hendrickson**

5 Senate Sponsor: Margaret Dayton

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 73, Water and Irrigation, relating to rulemaking authority of the
10 state engineer, application for an extension of time to prove beneficial use, and how an
11 engineer or land surveyor provides information for certain claims.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ changes some of the state engineer's mandatory rulemaking authority to permissive
15 rulemaking authority;

16 ▶ requires a wholesale electrical cooperative to provide certain information upon
17 applying for an extension of time to prove beneficial use;

18 ▶ removes the requirement that an engineer or land surveyor verify by oath certain
19 information in a claim to surface or underground water not otherwise appropriated;

20 and

21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **73-2-1**, as last amended by Laws of Utah 2008, Chapters 360 and 382
- 29 **73-2-22**, as enacted by Laws of Utah 1984, Chapter 33
- 30 **73-3-12**, as last amended by Laws of Utah 2009, Chapters 247 and 388
- 31 **73-3-16**, as last amended by Laws of Utah 2010, Chapter 108
- 32 **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136



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

35 Section 1. Section **73-2-1** is amended to read:

36 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

- 37 (1) There shall be a state engineer.
- 38 (2) The state engineer shall:
 - 39 (a) be appointed by the governor with the consent of the Senate;
 - 40 (b) hold office for the term of four years and until a successor is appointed; and
 - 41 (c) have five years experience as a practical engineer or the theoretical knowledge,
 - 42 practical experience, and skill necessary for the position.

43 (3) (a) The state engineer shall be responsible for the general administrative
44 supervision of the waters of the state and the measurement, appropriation, apportionment, and
45 distribution of those waters.

46 (b) The state engineer may secure the equitable apportionment and distribution of the
47 water according to the respective rights of appropriators.

48 (4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah
49 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,
50 regarding:

- 51 (a) reports of water right conveyances;
- 52 (b) the construction of water wells and the licensing of water well drillers;
- 53 (c) dam construction and safety;
- 54 (d) the alteration of natural streams;
- 55 ~~[(e) sewage effluent reuse;]~~
- 56 ~~[(f)]~~ (e) geothermal resource conservation; and
- 57 ~~[(g)]~~ (f) enforcement orders and the imposition of fines and penalties.

58 (5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah

- 59 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,
60 governing:
- 61 (a) water distribution systems and water commissioners;
 - 62 (b) water measurement and reporting;
 - 63 (c) ground-water recharge and recovery;
 - 64 (d) wastewater reuse;
 - 65 (e) the form, content, and processing procedure for a claim under Section 73-5-13 to
66 surface or underground water that is not represented by a certificate of appropriation;
 - 67 (f) the form and content of a proof submitted to the state engineer under Section
68 73-3-16;
 - 69 [~~d~~] (g) the determination of water rights; [~~and~~] or
70 [~~e~~] (h) the form and content of applications and related documents, maps, and reports.
- 71 (6) The state engineer may bring suit in courts of competent jurisdiction to:
- 72 (a) enjoin the unlawful appropriation, diversion, and use of surface and underground
73 water without first seeking redress through the administrative process;
 - 74 (b) prevent theft, waste, loss, or pollution of those waters;
 - 75 (c) enable him to carry out the duties of the state engineer's office; and
 - 76 (d) enforce administrative orders and collect fines and penalties.
- 77 (7) The state engineer may:
- 78 (a) upon request from the board of trustees of an irrigation district under Title 17B,
79 Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited
80 Purpose Local Government Entities - Local Districts, or a special service district under Title
81 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a
82 water survey to be made of all lands proposed to be annexed to the district in order to
83 determine and allot the maximum amount of water that could be beneficially used on the land,
84 with a separate survey and allotment being made for each 40-acre or smaller tract in separate
85 ownership; and
 - 86 (b) upon completion of the survey and allotment under Subsection (7)(a), file with the
87 district board a return of the survey and report of the allotment.
- 88 (8) (a) The state engineer may establish water distribution systems and define their
89 boundaries.

90 (b) The water distribution systems shall be formed in a manner that:

91 (i) secures the best protection to the water claimants; and

92 (ii) is the most economical for the state to supervise.

93 Section 2. Section 73-2-22 is amended to read:

94 **73-2-22. Emergency flood powers -- Action to enforce orders -- Access rights to**
95 **private and public property -- Injunctive relief against state engineer's decisions --**
96 **Judicial review provisions not applicable.**

97 Whenever the state engineer, with approval of the [~~chairman~~] chair of the [~~Disaster~~
98 ~~Emergency Advisory Council~~], Emergency Management Administration Council described in
99 Section 63K-3-201, makes a written finding that any reservoir or stream has reached or will
100 reach during the current water year a level far enough above average and in excess of capacity
101 that public safety is or is likely to be endangered or that substantial property damage is
102 occurring or is likely to occur, he shall have emergency powers until the danger to the public
103 and property is abated. Emergency powers shall consist of the authority to control stream flow
104 and reservoir storage or release. The state engineer must protect existing water rights to the
105 maximum extent possible when exercising emergency powers. Any action taken by the state
106 engineer under this section shall be by written order.

107 If any person refuses or neglects to comply with any order of the state engineer issued
108 pursuant to his emergency powers, the state engineer may bring action in the name of the state
109 in the district court to enforce them. In carrying out his emergency powers, the state engineer
110 shall have rights of access to private and public property.

111 Any person affected by a decision of the state engineer made under his emergency
112 powers shall have the right to seek injunctive relief, including temporary restraining orders and
113 temporary injunctions in any district court of the county where that person resides. No order of
114 the state engineer shall be enjoined or set aside unless shown by clear and convincing evidence
115 that an emergency does not in fact exist or that the order of the state engineer is arbitrary or
116 capricious. The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any order
117 of the state engineer issued pursuant to this section.

118 Section 3. Section 73-3-12 is amended to read:

119 **73-3-12. Time limit on construction and application to beneficial use --**
120 **Extensions -- Procedures and criteria.**

- 121 (1) As used in this section:
- 122 (a) "Public water supplier" is as defined in Section 73-1-4.
- 123 (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.
- 124 (2) (a) Within the time set by the state engineer under Subsection 73-3-10(5), an
- 125 applicant shall:
- 126 (i) construct works, if necessary;
- 127 (ii) apply the water to beneficial use; and
- 128 (iii) file proof with the state engineer in accordance with Section 73-3-16.
- 129 (b) Except as provided by Subsection (4), the state engineer shall extend the time in
- 130 which an applicant shall comply with Subsection (2)(a) if:
- 131 (i) the date set by the state engineer is not after 50 years from the day on which the
- 132 application is approved; and
- 133 (ii) the applicant shows:
- 134 (A) reasonable and due diligence in completing the appropriation; or
- 135 (B) a reasonable cause for delay in completing the appropriation.
- 136 (c) An applicant shall file a request for an extension of time with the state engineer on
- 137 or before the date set for filing proof.
- 138 (d) The state engineer may grant an extension of time authorized by Subsection (2)(b)
- 139 if the state engineer sets a date:
- 140 (i) no later than 14 years from the day on which the application is approved if the
- 141 applicant meets the requirements of Subsection (2)(b); and
- 142 (ii) after 14 years from the day on which the application is approved if:
- 143 (A) the applicant meets the requirements of Subsection (2)(b); and
- 144 (B) the state engineer publishes notice as provided in Subsection (2)(e).
- 145 (e) (i) The state engineer shall publish a notice of the request for an extension of time:
- 146 (A) once a week for two successive weeks, in a newspaper of general circulation, in the
- 147 county:
- 148 (I) in which the water source is located; and
- 149 (II) where the water will be used; and
- 150 (B) in accordance with Section 45-1-101 for two weeks.
- 151 (ii) The notice shall:

152 (A) state that a request for an extension of time has been made; and

153 (B) specify where an interested party may obtain additional information relating to the
154 request.

155 (f) A person who owns a water right or holds an application from the water source
156 referred to in Subsection (2)(e) may file a protest with the state engineer:

157 (i) within 20 days after the notice is published, if the adjudicative proceeding is
158 informal; and

159 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
160 formal.

161 (g) The approved extension of time is effective so long as the applicant continues to
162 exercise reasonable and due diligence in completing the appropriation.

163 (h) The state engineer shall consider the holding of an approved application by a public
164 water supplier or a wholesale electrical cooperative to meet the reasonable future water or
165 electricity requirements of the public to be reasonable and due diligence in completing the
166 appropriation for the purposes of this section for 50 years from the date on which the
167 application is approved.

168 (i) If the state engineer finds unreasonable delay or lack of reasonable and due
169 diligence in completing the appropriation, the state engineer may:

170 (i) deny the extension of time; or

171 (ii) grant the request in part or upon conditions, including a reduction of the priority of
172 all or part of the application.

173 (3) Except as provided by Subsection (4), an application upon which proof has not
174 been filed shall lapse and have no further force or effect after 50 years from the date on which
175 the application is approved.

176 (4) (a) If the works are constructed with which to make beneficial use of the water
177 applied for, the state engineer may, upon showing of that fact, extend the time in which to file
178 proof by setting a date after 50 years from the day on which the application is approved.

179 (b) (i) The state engineer may extend the time in which the applicant shall comply with
180 Subsection (2)(a) by setting a date after 50 years from the day on which the application is
181 approved if the applicant:

182 (A) is[~~;~~] a public water supplier[~~;~~] or [~~and~~] a wholesale electrical cooperative; and

183 (B) provides information that shows the water applied for in the application is needed
184 to meet the reasonable future requirements of the public.

185 (ii) The information provided by a public water supplier shall be in accordance with the
186 criteria listed in Subsection 73-1-4(2)(f).

187 (iii) A wholesale electrical cooperative shall provide the information described in
188 Subsection (4)(b)(i)(B) in a report that forecasts:

189 (A) the need for the water to produce power; and

190 (B) the ~~H~~→ [economic viability] power output ←~~H~~ of the project for the wholesale
190a electrical cooperative within
191 the next 40 years.

192 (c) The state engineer shall extend the time in which to file proof by setting a
193 reasonable date after 50 years from the day on which the application is approved if the
194 applicant:

195 (i) meets the requirements in Subsection (4)(b); and

196 (ii) has:

197 (A) constructed works to apply the water to beneficial use; or

198 (B) made substantial expenditures to construct the works.

199 Section 4. Section **73-3-16** is amended to read:

200 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**
201 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**
202 **Statement in lieu of proof of appropriation or change.**

203 (1) Sixty days before the date set for the proof of appropriation or proof of change to be
204 made, the state engineer shall notify the applicant by mail when proof of completion of the
205 works and application of the water to a beneficial use is due.

206 (2) On or before the date set for completing the proof in accordance with the
207 application, the applicant shall file proof with the state engineer on forms furnished by the state
208 engineer.

209 (3) Except as provided in Subsection (4), the applicant shall submit the following
210 information:

211 (a) a description of the works constructed;

212 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;

213 (c) the method of applying the water to beneficial use; and

- 214 (d) (i) detailed measurements of water put to beneficial use;
- 215 (ii) the date the measurements were made; and
- 216 (iii) the name of the person making the measurements.

217 (4) (a) (i) On applications filed for appropriation or permanent change of use of water
218 to provide a water supply for state projects constructed pursuant to Title 73, Chapter 10, Board
219 of Water Resources - Division of Water Resources, or for federal projects constructed by the
220 United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its
221 political subdivisions, public and quasi-municipal corporations, or water users' associations of
222 which the state, its agencies, political subdivisions, or public and quasi-municipal corporations
223 are stockholders, the proof shall include:

- 224 (A) a statement indicating construction of the project works has been completed;
- 225 (B) a description of the major features with appropriate maps, profiles, drawings, and
226 reservoir area-capacity curves;
- 227 (C) a description of the point or points of diversion and rediversion;
- 228 (D) project operation data;
- 229 (E) a map showing the place of use of water and a statement of the purpose and method
230 of use;
- 231 (F) the project plan for beneficial use of water under the applications and the quantity
232 of water required; and
- 233 (G) a statement indicating what type of measuring devices have been installed.

234 (ii) The director of the Division of Water Resources shall sign proofs for the state
235 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the
236 federal projects specified in Subsection (4)(a).

237 (b) Proof on an application for appropriation or permanent change for a surface storage
238 facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water
239 supply for the reasonable requirements of the public shall include:

- 240 (i) a description of the completed water storage facility;
- 241 (ii) a description of the major project features and appropriate maps, profiles, drawings,
242 and reservoir area-capacity curves as required by the state engineer;
- 243 (iii) the quantity of water stored in acre-feet;
- 244 (iv) a description of the water distribution facility for the delivery of the water; and

245 (v) the project plan for beneficial use of water including any existing contracts for
246 water delivery.

247 [~~(c) The completed proof shall conform to rules established by the state engineer.~~]

248 (5) The proof on all applications shall be sworn to by the applicant or the applicant's
249 appointed representative [~~and proof engineer~~].

250 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall
251 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed
252 professional engineer that show:

253 (i) the location of the completed works;

254 (ii) the nature and extent of the completed works;

255 (iii) the natural stream or source from which and the point where the water is diverted
256 and, in the case of a nonconsumptive use, the point where the water is returned; and

257 (iv) the place of use.

258 (b) The state engineer may waive the filing of maps, profiles, and drawings if in the
259 state engineer's opinion the written proof adequately describes the works and the nature and
260 extent of beneficial use.

261 (7) The completed proof shall conform to rules and standards established by the state
262 engineer.

263 (8) In those areas in which general determination proceedings are pending, or have
264 been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state engineer
265 may petition the district court for permission to:

266 (a) waive the requirements of this section and Section 73-3-17; and

267 (b) permit each owner of an application to file a verified statement to the effect that the
268 applicant has completed the appropriation or change and elects to file a statement of water
269 users claim in the proposed determination of water rights or any supplement to it in accordance
270 with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or
271 proof of change.

272 (9) This section does not apply to an instream flow water right authorized by Section
273 73-3-30.

274 Section 5. Section **73-5-13** is amended to read:

275 **73-5-13. Claim to surface or underground water not otherwise represented --**

276 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**
277 **action to determine validity -- Rules.**

278 (1) (a) All claimants to the right to the use of water, including both surface and
279 underground, whose rights are not represented by certificates of appropriation issued by the
280 state engineer, by applications filed with the state engineer, by court decrees, or by notice of
281 claim filed pursuant to law, shall submit the claim to the state engineer.

282 (b) Subsections (2) through (7) shall only apply to claims submitted to the state
283 engineer pursuant to this section after May 4, 1997.

284 (2) (a) Each claim submitted under this section shall be verified under oath by the
285 claimant or the claimant's duly appointed representative and submitted on forms furnished by
286 the state engineer setting forth any information the state engineer requires, including:

287 (i) the name and post office address of the person making the claim;

288 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,
289 where appropriate;

290 (iii) the source of supply;

291 (iv) the priority date of the right;

292 (v) the location of the point of diversion with reference to a United States land survey
293 corner;

294 (vi) the place of use;

295 (vii) the nature and extent of use;

296 (viii) the time during which the water has been used each year; and

297 (ix) the date when the water was first used.

298 (b) The claim shall also include the following information [~~verified under oath by a~~
299 ~~registered engineer or land surveyor~~], prepared by a Utah licensed engineer or a Utah licensed
300 land surveyor:

301 (i) measurements of the amount of water diverted;

302 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per
303 second is consistent with the beneficial use claimed and the supply which the source is capable
304 of producing; and

305 (iii) a map showing the original diversion and conveyance works and where the water
306 was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial

307 use.

308 (c) The state engineer may require additional information as necessary to evaluate any
309 claim including:

310 (i) affidavits setting forth facts of which the affiant has personal knowledge;
311 (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
312 (iii) authenticated copies of original diaries, personal histories, or other historical
313 documents which document the claimed use of water; and

314 (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's
315 office.

316 (3) (a) A claim may be corrected by submitting to the state engineer a verified
317 corrected claim designated as such and bearing the same number as the original claim.

318 (b) No fee shall be charged for submitting a corrected claim.

319 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under
320 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay
321 the expenses of conducting a field investigation and publishing a notice of the claim, the state
322 engineer shall:

323 (i) file the claim;

324 (ii) endorse the date of its receipt;

325 (iii) assign the claim a water right number; and

326 (iv) publish a notice of the claim following the same procedures as provided in Section
327 73-3-6.

328 (b) Any claim not acceptably complete under Subsection (2) shall be returned to the
329 claimant.

330 (c) The acceptance of any claim filed under this section by the state engineer may not
331 be considered to be an adjudication by the state engineer of the validity of the claimed water
332 right.

333 (5) (a) The state engineer shall:

334 (i) conduct a field investigation of each claim filed; and

335 (ii) prepare a report of the investigation.

336 (b) The report of the investigation shall:

337 (i) become part of the file on the claim; and

338 (ii) be admissible in any administrative or judicial proceeding on the validity of the
339 claim.

340 (6) (a) Any person who may be damaged by a diversion and use of water as described
341 in a claim submitted pursuant to this section may file an action in district court to determine the
342 validity of the claim, whether or not the claim has been accepted for filing by the state
343 engineer.

344 (b) Venue for the action shall be in the county in which the point of diversion listed in
345 the claim is located, or in a county where the place of use, or some part of it, is located.

346 (c) The action shall be brought against the claimant to the use of water or the claimant's
347 successor in interest.

348 (d) In any action brought to determine the validity of a claim to the use of water under
349 this section, the claimant shall have the initial burden of proof as to the validity of the claimed
350 right.

351 (e) Any person filing an action challenging the validity of a claim to the use of water
352 under this section shall notify the state engineer of the pendency of the action in a manner
353 prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no
354 action on any change or exchange applications founded on the claim that is the subject of the
355 pending litigation, until the court adjudicates the matter.

356 (f) Upon the entering of any final order or decree in any judicial action to determine the
357 validity of a claim under this section, the prevailing party shall file a certified copy of the order
358 or decree with the state engineer, which shall become part of the state engineer's file on the
359 claim.

360 ~~[(7) The state engineer may make rules consistent with this section specifying~~
361 ~~information required to be included in a claim and claim procedures.]~~

Legislative Review Note
as of 2-13-12 5:44 PM

Office of Legislative Research and General Counsel

Fixed Time Application Proposal

Summary:

The purpose of this proposal is to remove the requirement for the submission of proof on fixed time applications allowed in Section 73-3-8(2). There has been significant confusion in the water user community over proof due and fixed time expiration dates and notices the state engineer must send out regarding approaching deadlines. Fixed time applications are not permanent water rights and the state engineer's experience has been there is little benefit to submitting proof and receiving a certificate. The state engineer routinely requires water use reporting on fixed time applications and believes that information more appropriately addresses record needs for fixed time applications.

73-3-10. Approval or rejection of application.

(1) When the approval or rejection of an application is decided, a record of the decision shall be made in the state engineer's office.

(2) The state engineer's decision shall be mailed to the applicant.

(3) If the application is approved, the applicant shall be authorized upon receipt of the decision to:

(a) proceed with the construction of the necessary works;

(b) take any steps required to apply the water to the use named in the application; and

(c) perfect the proposed application.

(4) If the application is rejected, the applicant shall take no steps toward the prosecution of the proposed work or the diversion and use of the public water under the application.

(5) The state engineer shall state in any decision approving an application the time within which the construction work must be completed and the water applied to beneficial use unless the application is for a fixed time period.

Administrative Priority Modification Authority Reference Correction

Summary:

The purpose of this proposal is to correct statute to recognize all sections where priority may be modified administratively. Separate reinstatement provisions were added in recent years to sections 73-3-5.6 and 73-3-20. This proposal includes references to those sections.

73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.

(1) When an application lapses for failure of the applicant to comply with this title's provisions or the state engineer's order, notice of the lapse shall promptly be given to the applicant by regular mail.

(2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement.

(3) The original priority date of a lapsed application may not be reinstated, except upon a showing of fraud or mistake of the state engineer.

(4) The priority of an application shall be determined by the date of receiving the written application in the state engineer's office, except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20 and as provided in this section.

(5) Before issuance of a certificate of appropriation, rights claimed under applications for the appropriation of water may be transferred or assigned by instruments in writing.

(6) An instrument transferring or assigning a right described in Subsection (5), when acknowledged or proved and certified in the manner provided by law for the acknowledgment or proving of conveyances of real estate, may be filed in the office of the state engineer and shall from time of filing impart notice to all persons of the contents thereof.

(7) Every assignment of an application that is not filed as provided by this section is void as against any subsequent assignee in good faith and for valuable consideration of the same application or any portion thereof where the subsequent assignee's own assignment is first duly filed.

Deed Addendum Proposal

Purpose:

Provide incentive for people to use water right deed addendums and county recorders to forward deed addendums to the state engineer. Note: In addition to the statute change below this proposal will require a resolution to modify the deed addendum form instructions.

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) Beginning July 1, 2011, a deed under Subsection (1)(a) may include a water rights addendum as provided in Section 57-3-109.

(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.

(f) A water right addendum recorded and forwarded to the state engineer by a county recorder as described in Section 57-3-109 shall be considered by the state engineer to be a submitted report of water right conveyance as described in this subsection.

Corrected Water User Claims

The purpose of this proposed legislation is to clarify the process to correct a water users claim so that adequate notice of the correction is provided other water users and insure claims are altered by an authorized party. Additionally, the proposal addresses a conflict with the general adjudication process which upon completion is presumed to have addressed all claims.

73-5-13. Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.

(1) (a) All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees, or by notice of claim filed pursuant to law, shall submit the claim to the state engineer.

(b) Subsections (2) through (7) shall only apply to claims or corrected claims submitted to the state engineer pursuant to this section after May 15, ~~2013~~, 1997.

(2) (a) Each claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms furnished by the state engineer setting forth any information the state engineer requires, including:

- (i) the name and post office address of the person making the claim;
- (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;
- (iii) the source of supply;
- (iv) the priority date of the right;
- (v) the location of the point of diversion with reference to a United States land survey corner;
- (vi) the place of use;
- (vii) the nature and extent of use;
- (viii) the time during which the water has been used each year; and
- (ix) the date when the water was first used.

(b) The claim shall also include the following information verified under oath by a registered engineer or land surveyor:

- (i) measurements of the amount of water diverted;
- (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply which the source is capable of producing; and
- (iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.

(c) The state engineer may require additional information as necessary to evaluate any claim including:

- (i) affidavits setting forth facts of which the affiant has personal knowledge;

(ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
(iii) authenticated copies of original diaries, personal histories, or other historical documents which document the claimed use of water; and
(iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.

(3) (a) A claim may be corrected by submitting to the state engineer a verified corrected claim designated as such, including the information required under subsection (2), and bearing the same number as the original claim.

(b) No fee shall be charged for submitting a corrected claim if filed before the claim it corrects is published as described in subsection (4)(a)(iv).

(c) A corrected claim may be submitted only by the claimant shown on the original claim or the successor in interest as shown on records of the state engineer.

(d) Corrected claims submitted to the state engineer shall be treated in all respects as original claims under provisions of this section.

(4) (a) Upon submission by a claimant of a claim that is acceptably complete under Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:

(i) file the claim;
(ii) endorse the date of its receipt;
(iii) assign the claim a water right number; and
(iv) publish a notice of the claim following the same procedures as provided in Section 73-3-6.

(b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.

(c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.

(5) (a) The state engineer shall:

(i) conduct a field investigation of each claim filed; and
(ii) prepare a report of the investigation.

(b) The report of the investigation shall:

(i) become part of the file on the claim; and
(ii) be admissible in any administrative or judicial proceeding on the validity of the claim.

(6) (a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this section may file an action in district court to determine the validity of the claim, whether or not the claim has been accepted for filing by the state engineer.

(b) Venue for the action shall be in the county in which the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.

(c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.

(d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.

(e) Any person filing an action challenging the validity of a claim to the use of water

under this section shall notify the state engineer of the pendency of the action in a manner prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation, until the court adjudicates the matter.

(f) Upon the entering of any final order or decree in any judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, which shall become part of the state engineer's file on the claim.

(7) The state engineer may make rules consistent with this section specifying information required to be included in a claim and claim procedures.

(8) The district court in a general adjudication pursuant to Title 73, Chapter 4, may by decree after completion of final summons pursuant to Section 73-4-22 close the area to the filing of claims as described in this section. Any claims submitted to the state engineer after such closure are to be returned to the claimant without further action.

**PROPOSED AMENDMENTS TO THE GENERAL ADJUDICATION STATUTES
EXECUTIVE WATER TASK FORCE**

For Discussion July 12, 2012
Prepared by the State Engineer's Office and the Attorney General's Office

After the Executive Task Force meeting on June 21, 2012, the State Engineer is revising the proposed legislation to base it on HB 369 from the 2012 legislative session. It includes provisions from HB 369, a new provision to allow the State Engineer to divide an adjudication area into sub-areas, and an amended approach to the List of names and Addresses in Section 73-4-3. There are therefore five basic provisions, one of which is new, described as follows:

1. Notice by Electronic Means. The legislation adopts the provisions directly from HB 369 to allow for service of notice (Sec. 73-4-3) and Proposed Determinations (Sec. 73-4-11) by electronic means.
2. Elimination of Requirement to File a Preliminary List of Names and Addresses: The provision that a list of names and addresses, prepared and filed at the outset of the general adjudication, is the basis for all notices and proposed determinations is eliminated. Instead, the amendment would provide that the State Engineer sends notices and proposed determinations to claimants of record in the State Engineer's Office. This does not change the make-up of the group to whom notices and proposed determinations are sent; it only eliminates the requirement to file an "amended list" and to obtain a court order approving that list before sending out any notices or proposed determinations. The State Engineer will continue to file a certificate of service showing the names and addresses of the claimants to whom notice or proposed determinations were sent.
3. State Engineer to Compile Claims: The proposed amendment adopts the provisions from HB 369 to provide that the State Engineer shall compile the Statements of Water Users Claim and file them with court. The amendments are in Sec. 73-4-3 and a cross-reference in Sec. 73-4-5.
4. Area Divisions and Subdivisions (New): The legislation includes a provision in Sec. 73-4-1 to allow the State Engineer to divide a general adjudication area into divisions and subdivisions to promote efficiency. It clarifies that the adjudication procedure, once commenced, applies to each sub-area individually.
5. Summons: The provision on Summons (Sec. 73-4-4) is from the 2012 HB 369. It provides for service of summons by mail and publication for five weeks. The State Engineer intends to continue to discuss and explore the summons requirement. The version sent out prior to the meeting includes a provision that the United States is served summons according to federal law.

07/12/2012

Water and Irrigation

Chapter 4 Determination of Water Rights

Section 1 By engineer on petition of users -- Upon request of Department of Environmental Quality.

73-4-1. By engineer on petition of users -- Upon request of Department of Environmental Quality.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

(2) (a) As used in this section, "executive director" means the executive director of the Department of Environmental Quality.

(b) The executive director, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

(d) If a general adjudication has been filed in the state district court regarding the area requested pursuant to Subsection (2)(b), the state engineer and the state attorney general shall join the United States as a party to the action.

(3) In order to more efficiently carry out the duties described in this Chapter, the state engineer may divide a general adjudication area into divisions and subdivisions and proceed with the requirements of this Chapter with respect to each division and subdivision. The decrees for the divisions and subdivisions within a general adjudication area shall be incorporated into a final decree for that adjudication area.

Amended by Chapter 107, 2001 General Session

07/12/2012

Water and Irrigation

Chapter 4 Determination of Water Rights

Section 3 Procedure for action to determine rights -- Notice to and list of claimants -- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice of completion.

73-4-3. Procedure for action to determine rights -- Notice to and list of claimants -- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice of completion.

(1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or by any person claiming the right to use the waters of any river system, lake, underground water basin, or other natural source of supply that involves a determination of the rights to the major part of the water of the source of supply or the rights of 10 or more of the claimants of the source of supply, the clerk of the district court shall notify the state engineer that a suit has been filed.

(2) (a) The state engineer then shall give notice to the claimants by publishing notice:

(i) once a week for two consecutive weeks in a newspaper designated by the court as most likely to give notice to such claimants; and

(ii) in accordance with Section 45-1-101 for two weeks.

(b) The notice shall state:

(i) an action has been filed;

(ii) the name of the action;

(iii) the name and location of the court in which the action is pending; and

(iv) the name or description of the water source involved.

(c) ~~Claimants to the use of water shall notify~~ The state engineer may give notice of further proceedings, after service of summons, without court order

~~(i) electronically, if the state engineer within 90 days from the date notice is given of their names and addresses;~~

~~(d) After the expiration of 90 days, the state engineer shall prepare a list that shall include the names and addresses of all claimants then can~~ verify the claimant's receipt, or by mail or personal service to

(A) all claimants of record in the state engineer's office and;

(B) all claimants who have notified the state engineer of their addresses, and this list shall be certified by the state engineer as complete and filed with the clerk of the court.

~~(e) At any time during the action:~~

~~(i) the court upon petition may by order permit the addition of names and addresses to the list prepared under Subsection (2)(d);~~

~~(ii) the court upon petition by the state engineer may by order permit amendment or substitution of the list prepared under Subsection (2)(d); and~~

~~(iii) the clerk of the court may, without court order, upon notice from the claimant and upon amendment of the state engineer's records note any change of address.~~

~~(f) If any claimant appears in this action by an attorney, the clerk shall note on the list the address of the attorney.~~

~~(g) After the list is filed by the state engineer, notice of further proceedings, after service of summons, may be given without court order by mailing a copy thereof to the persons listed at the addresses listed and by mailing a copy thereof to any attorney of record for any such person, and notice may be given to the listed persons and to all other claimants by publication in the manner and for the time prescribed by order of the district court and~~ address:

- (C) an attorney who enters an appearance in court for a claimant in the action.
- (ii) by publishing the notice in accordance with Subsection (2)(a) if the notice is for the benefit of the claimants generally.
- (d) The State Engineer shall file with the clerk of the district court a certificate of service containing the names and addresses of all claimants served with notice pursuant to this Chapter.
- (3) After the ~~statement or list is filed~~ notice has been published, the state engineer shall:
- (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting water from the water source; and
- (b) hold a public meeting in the survey area to inform at the water right claimants of the survey.
- (4) ~~(a) As soon as~~ After the survey described in Subsection (3) is complete, the state engineer shall file notice of completion with the clerk and ~~give notice by mail or by personal service to all claimants whose~~ names appear on the list that:
- ~~(i) the survey is complete;~~
- ~~(ii) their claims are due within 90 days from the date of notice; and~~
- ~~(iii) give notice to each claimant in accordance Subsection (2)(c) and an attorney described in subsection 2(c)(i)(C) that~~
- (i) the state engineer has investigated the claimant's water rights, and
- (ii) the claimant may submit a written statement of claim within 90 days after service of the notice, each claimant must file a written statement with the clerk of the court setting forth the claimant's respective claim to the use of the water the day on which the notice is issued.
- (b) Notice given by mail is complete when the notice is mailed.
- (c) In response to the state engineer's notice described in Subsection (4)(a), a claimant who desires to claim a water right in the action shall file a written statement of claim in accordance with section 73-4-5.
- (d) The state engineer shall compile the statements of claim submitted under Subsection (4)(b) and file them with the court.
- (5) When a suit has been filed by the state engineer as provided by Section 73-4-1, or by any person involving the major part of the waters of any river system, lake, underground water basin, or other source of supply, or the rights of 10 or more of the water claimants of the source of supply, whether the suit is filed prior to or after the enactment hereof, the state engineer, upon receiving notice, shall examine the records of the state engineer's office with respect to the water source involved, and if they are incomplete to make such further investigation and survey as may be necessary for the preparation of the report and recommendation as required by Section 73-4-11.
- (6) In all such cases the court shall proceed to determine the water rights involved in the manner provided by this chapter, and not otherwise.

Amended by Chapter 365, 2009 General Session
Amended by Chapter 388, 2009 General Session

07/12/2012

Water and Irrigation

Chapter 4 Determination of Water Rights

Section 4 Summons -- Service -- Publication -- Form -- Delivery of form for claimant's statement.

73-4-4. Summons -- Service -- Publication -- Form -- Delivery of form for claimant's statement.

~~(1)(a) Claimants whose names appear on the list prescribed by Section 73-4-3 at the time the list is filed by the state engineer with the clerk of the court shall be served with a summons issued out of the district court and served as a summons is served in other civil cases:~~

~~—(a) The State Engineer shall, by mail, serve a summons to each claimant described in Subsection 73-4-3(2)(c)(i)(A) or (B).~~

~~(b) Upon the filing by the state engineer of an affidavit that the state engineer has searched the records of the state engineer's office and has listed all names as required by Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state engineer of their names and addresses, summons may be served on all other persons and claimants not listed on said list in accordance with the Utah Rules of Civil Procedure by publication of summons:~~

~~(i) in a newspaper or newspapers designated by the judge of the court as most likely to give notice to the persons served, five times, once each week for five successive weeks; and~~

~~(ii) in accordance with Section 45-1-101 for five weeks.~~

~~(eb) Service of summons is completed upon the date of the publication.~~

~~(dc) The summons shall be substantially in the following form:~~

~~"In the District Court of County, State of Utah, in the matter of the general adjudication of water rights in the described water source.~~

SUMMONS

The State of Utah to the said defendant:

You are hereby summoned to appear and defend the above entitled action which is brought for the purpose of making a general determination of the water rights of the described water source. Upon the service of this summons upon you, you will thereafter be subject to the jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the above entitled action and to protect your rights therein. When the state engineer has completed the survey you will be given a further written notice, either in person or by mail, sent to your last-known address, that you must file a water users claim in this action setting forth the nature of your claim, and said notice will specify the date upon which your water users claim is due and thereafter you must file said claim within the time set and your failure so to do will constitute a default in the premises and a judgment may be entered against you declaring and adjudging that you have no right in or to the waters of described water source."

(d) Summons shall be served on the United States in accordance with federal law.

(2) At the time the said notice of completion of survey is given, the state engineer must mail or otherwise deliver a form upon which the claimant shall present in writing, as provided in the next succeeding section, all the particulars relating to the appropriation of the water of said river system or water source to which the claimant lays claim.

07/12/2012

Water and Irrigation

Chapter 4 Determination of Water Rights

Section 5 Statements by claimants.

73-4-5. Statements by claimants.

Each person claiming a right to use any water of such river system or water source shall, within 90 days after the completed service of the notice of completion of survey prescribed by Section 73-4-3 hereof, file ~~in~~with the office ~~State Engineer of~~ the clerk of the district court a statement in writing which shall be signed and verified by the oath of the claimant, and shall include as near as may be the following: The name and post-office address of the person making the claim; the nature of the use on which the claim of appropriation is based; the flow of water used in cubic feet per second or the quantity of water stored in acre-feet, and the time during which it has been used each year; the name of the stream or other source from which the water is diverted, the point on such stream or source where the water is diverted, and the nature of the diverting works; the date when the first work for diverting the water was begun, and the nature of such work; the date when the water was first used, the flow in cubic feet per second or the quantity of water stored in acre-feet, and the time during which the water was used the first year; and the place and manner of present use; and such other facts as will clearly define the extent and nature of the appropriation claimed, or as may be required by the blank form which shall be furnished by the state engineer under the direction of the court.

No Change Since 1953

07/12/2012

Water and Irrigation

Chapter 4 Determination of Water Rights

Section 11 Report and recommendation by engineer to court -- Notice -- Public meeting.

73-4-11. Report and recommendation by engineer to court -- Notice -- Public meeting.

(1) ~~Within 30 days after the expiration of the 90 days allowed for filing statements of claims~~ last day on which a claimant is allowed to file a statement of claim under Subsection 73-4-3(4)(b), the state engineer shall begin to tabulate the facts contained in the statements filed and to investigate, whenever the state engineer shall consider necessary, the facts set forth in the statements by reference to the surveys already made or by further surveys, and shall as expeditiously as possible report to the court a recommendation of how all rights involved shall be determined.

(2) After full consideration of the statements of claims, and of the surveys, records, and files, and after a personal examination of the river system or water source involved, if the examination is considered necessary, the state engineer shall:

(a) formulate a report and a proposed determination of all rights to the use of the water of the river system or water source;

(b) ~~mail or deliver~~ provide electronically if the state engineer can verify the claimant's receipt, or by mail or personal service, to each claimant described in Subsection 73-4-3(2)(c)(i)(A) or (B) and an attorney described in Subsection 73-4-3(2)(c)(i)(C):

~~(i)(A) a copy of the report and proposed determination to each claimant with notice that any claimant dissatisfied with; or~~

~~(B) notice on how to obtain or access an electronic copy of the report and proposed determination; and~~

~~(ii) notice of the claimant's right to file an objection to the proposed determination within 90 days after the day on which the report and proposed determination may within 90 days from the date of mailing or delivery file with the clerk of the district court a written objection; and were mailed, personally served, or sent electronically; and~~

(c) hold a public meeting in the area covered by the report and proposed determination to describe the report and proposed determination to the claimants.

(3) A claimant who desires to object to the state engineer's report and proposed determination shall, within 90 days after the day on which the state engineer mailed or delivered the report and proposed determination, file a written objection to the report and proposed determination with the clerk of the district court.

~~(34)~~ The state engineer shall distribute the waters from the natural streams or other natural sources:

(a) in accordance with the proposed determination or modification to the proposed determination by court order until a final decree is rendered by the court; or

(b) if the right to the use of the waters has been decreed or adjudicated, in accordance with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

Amended by Chapter 320, 2010 General Session

9-8-404. Agency responsibilities -- State historic preservation officer to comment on undertaking -- Public Lands Policy Coordinating Office may require joint analysis.

(1) (a) Before expending any state funds or approving any undertaking where the agency exercises land planning or management authority, each agency shall:

(i) take into account the effect of the expenditure or undertaking on any historic property; and

(ii) unless exempted by agreement between the agency and the state historic preservation officer, provide the state historic preservation officer with a written evaluation of the expenditure's or undertaking's effect on the historic property.

(b) Once per month, the state historic preservation officer shall provide the Public Lands Policy Coordinating Office with a list of undertakings on which an agency or federal agency has requested the state historic preservation officer's or the Antiquities Section's advice or consultation.

(c) The Public Lands Policy Coordinating Office may request the joint analysis described in Subsections (2)(c) and (d) of any proposed undertaking on which the state historic preservation officer or Antiquities Section is providing advice or consultation.

(2) (a) If the state historic preservation officer does not concur with the agency's written evaluation required by Subsection (1)(a)(ii), the state historic preservation officer shall inform the Public Lands Policy Coordinating Office of any objections.

(b) The Public Lands Policy Coordinating Office shall review the state historic preservation officer's objections and determine whether or not to initiate the joint analysis established in Subsections (2)(c) and (d).

(c) If the Public Lands Policy Coordinating Office determines further analysis is necessary, the Public Lands Policy Coordinating Office shall, jointly with the agency and the state historic preservation officer, analyze:

(i) the cost of the undertaking, excluding costs attributable to the identification, potential recovery, or excavation of historic properties;

(ii) the ownership of the land involved;

(iii) the likelihood of the presence and the nature and type of historical properties that may be affected by the expenditure or undertaking; and

(iv) clear and distinct alternatives for the identification, recovery, or excavation of historic properties, including ways to maximize the amount of information recovered and report that information at current standards of scientific rigor.

(d) The Public Lands Policy Coordinating Office, the agency, and the state historic preservation officer shall also consider as part of the joint analysis:

(i) the estimated costs of the alternatives in Subsection (2)(c)(iv) in total and as a percentage of the total cost of the undertaking; and

(ii) at least one plan for the identification, recovery, or excavation of historic properties that does not substantially increase the cost of the proposed undertaking.

(3) (a) (i) If the state historic preservation officer concurs with the agency's evaluation or if the Public Lands Policy Coordinating Office determines that the joint analysis is unnecessary, the state historic preservation officer shall, no later than 30 calendar days after receiving the agency's evaluation, provide formal comments on the agency's evaluation.

(ii) If a joint analysis is conducted, the state historic preservation officer shall provide

formal comments on the agency's evaluation no later than 30 calendar days after the conclusion of the joint analysis.

(b) The state historic preservation officer shall ensure that the comments include the results of any joint analysis conducted under Subsection (2).

(c) If a joint analysis is not conducted, the state historic preservation officer's comments may include advice about ways to maximize the amount of historic, scientific, archaeological, anthropological, and educational information recovered, in addition to the physical recovery of specimens and the reporting of archaeological information at current standards of scientific rigor.

(4) (a) Once per month, the state historic preservation officer shall provide the Public Lands Policy Coordinating Office with a list of comments the state historic preservation officer intends to make or has made as required or authorized by the National Historic Preservation Act, 16 U.S.C. Sec. 470 et seq.

(b) At the request of the Public Lands Policy Coordinating Office, the state historic preservation officer shall discuss the comments with the Public Lands Policy Coordinating Office.

CHANGE APPLICATION MODIFICATIONS
August 7, 2012 Draft

This proposal is based on language from SB187 of the 2012 Legislature with revisions related to who may file a change application removed (Jensen without Big Ditch fix version). The concepts were originally approved by the 2011 Executive water issues task force.

73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.

(1) For purposes of this section:

(a) "Permanent change" means a change for an indefinite period of time ~~with an intent to relinquish the original point of diversion, place of use, or purpose of use, to the:-~~

(i) point of diversion;

(ii) place of use;

(iii) period of use;

(iv) nature of use for which the water is currently appropriated; or

(v) addition or deletion of storage as an authorized use.

(b) "Temporary change" means a change for a fixed period of time not exceeding one year, to the:

(i) point of diversion

(ii) place of use;

(iii) period of use;

(iv) nature of use for which the water is currently appropriated; or

(v) addition of deletion of storage as an authorized use.

(c) "Quantity of water available for change" means the quantity of water, under a water right, that has been put to beneficial use within the time provided in Section 73-1-4.

(2) (a) Subject to Subsection (2)(c), a person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) Except as provided by Section 73-3-30, a change may not be made if it impairs a vested water right without just compensation.

(c) A change application on a federal reclamation project water right shall be signed by:

(i) the local water users organization that is contractually responsible for:

(A) the operation and maintenance of the project; or

(B) the repayment of project costs; and

(ii) the record owner of the water right.

(3) A person entitled to use water shall change a point of diversion, place of use, or purpose of water use, including water involved in a general adjudication or other suit, in the manner provided in this section.

(4) (a) A person entitled to use water may not make a change unless the state engineer approves the change application.

(b) A person entitled to use water shall submit a change application upon forms furnished by the state engineer and shall set forth:

- (i) the applicant's name;
- (ii) the water right description, including the water right number;
- (iii) the water quantity;
- (iv) the stream or water source;
- (v) if applicable, the point on the stream or water source where the water is diverted;
- (vi) if applicable, the point to which it is proposed to change the diversion of the water;
- (vii) the place, ~~nature~~purpose, ~~period~~, and extent of the ~~current~~present use;
- (viii) the place, ~~nature~~purpose, ~~period~~, and extent of the proposed use; and
- (ix) any other information that the state engineer requires.

(c)(i) Subject to Subsection (4)(c)(ii), in a change application proceeding relating to a water right, to prevent impairing other water rights, the state engineer may review the beneficial use of the water under the water right and determine the quantity of water available for change.

(ii) In reviewing the beneficial use of the water under Subsection (4)(c)(i), the state engineer shall, if the water right is exempted or protected under Section 73-1-4 or other law, consider the water reasonably applied to beneficial use.

(d)(i) In reviewing the beneficial use of water and determining the quantity of water available for change under Subsection (4)(c)(i), the state engineer shall:

(A) presume that the quantity of water available for change is the full amount of water available under the water right, unless the presumption is rebutted by clear and convincing evidence that demonstrates that a smaller quantity of water is available for change;

(B) if the state engineer or a protestant to the application questions the quantity of water available for change, conduct an administrative hearing where the change applicant and a protestant may present evidence regarding the quantity of water available for change; and

(C) if the state engineer determines that the quantity of water available for change is less than the amount of water required by the change application, state the factual basis for the determination.

(ii) If the state engineer determines that the quantity of water available for change is less than the amount of water required by the change application, the state engineer may:

(A) reject the change application; or

(B) limit the approval of the change application to the quantity of water available for change.

(iii) The state engineer's determination of the quantity of water available for change does not:

(A) constitute a forfeiture or abandonment;

(B) affect the use of the unapproved portion of the underlying water right; or

(C) constitute an adjudication of the underlying water right.

(e)(i) Before the state engineer makes a decision on a change application, the change applicant may:

(A) withdraw the change application; or

(B) request that the state engineer stay the proceedings on the change application for up to

two years after the day on which the applicant requests the stay, or, if the state engineer finds good cause, for more than two years.

(ii)(A) A change applicant who desires to resume proceedings stayed under Subsection (4)(e)(i)(B) shall file with the state engineer a written request to resume the proceedings.

(B) If the state engineer stays the proceedings of a change application under Subsection (4)(e)(i)(B) and the applicant does not resume the proceedings within the time limit of the stay, the state engineer shall consider the application withdrawn.

(5) (a) With respect to a change application for a permanent change:

(i) The state engineer shall follow the same procedures provided in this title for approving an application to appropriate water; and

(ii) the rights and duties of ~~at~~ the change applicants are the same as the rights and duties of a person who applies to appropriate water under this title ~~with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.~~

(b) The state engineer may waive notice for a permanent change application involving only a change in point of diversion of 660 feet or less.

(6) (a) The state engineer shall investigate all temporary change applications.

(b) The state engineer shall issue an order authorizing a temporary change if the state engineer finds that the temporary change:

(i) will not exceed the quantity of water available for the change; and

(ii) does not impair a vested water right.

(c) The state engineer may reject a temporary change application if the state engineer finds that the temporary change:

(i) will exceed the quantity of water available for the change; or

(ii) would impair a vested water right.

~~If the state engineer finds that the temporary change will not impair a vested water right, the state engineer shall issue an order authorizing the change.~~

~~(c) If the state engineer finds that the change sought might impair a vested water right, before authorizing the change, the state engineer shall give notice of the application to any person whose right may be affected by the change.~~

~~(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.~~

(7) (a) Except as provided by Section 73-3-30, the state engineer may not reject a permanent or temporary change application for the sole reason that the change would impair a vested water right.

(b) If otherwise proper, where interference with another water right has been demonstrated, the state engineer may approve a permanent or temporary change application ~~for part of the water involved or upon the condition that the applicant acquire the conflicting water right.~~

~~(8) (a) A person holding an approved application for the appropriation of water may change the point of diversion, place of use, or purpose of use.~~

~~(b) A change of an approved application to appropriate water does not:~~

~~(a)(i) affect the priority of the original application to appropriate water; or~~

(b)(ii) extend the time period within which the construction of work is to begin or be completed.

(9) Any person who ~~changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section~~ makes a permanent or temporary change before obtaining an approved change application under this section:

(a) obtains no right;

(b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted change is made knowingly or intentionally; and

(c) is guilty of a separately punishable offense for each day of the unlawful change.

(10) (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.

(b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

73-3-8. Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals.

(1) (a) ~~It shall be the duty of the~~ The state engineer shall approve an application to appropriate water, or a permanent change application, if:

(i) there is unappropriated water in the proposed source;

(ii) subject to Section 73-1-4, for a permanent change application described in Section 73-3-3, the proposed use is based on the quantity of water that has been placed to beneficial use under a water right;

(iii) the proposed use will not impair an existing water rights or interfere with the more beneficial use of the water;

(iv)(iii) the proposed plan is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare;

(v)(iv) the applicant has the financial ability to complete the proposed works; and

(vi)(v) the application was filed in good faith and not for purposes of speculation or monopoly.

(b) (i) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application to appropriate water or a change application will interfere with the water's more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, it is the state engineer's duty to withhold approval or rejection of the application until the state engineer has investigated the

matter.

(ii) If an application does not meet the requirements of this section, it shall be rejected.

(2) (a) An application to appropriate water for industrial, power, mining development, manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and certain period from the time the water is placed to beneficial use under the application, but in no event may an application be granted for a period of time less than that ordinarily needed to satisfy the essential and primary purpose of the application or until the water is no longer available as determined by the state engineer.

(b) At the expiration of the period fixed by the state engineer the water shall revert to the public and is subject to appropriation as provided by this title.

(c) No later than 60 calendar days before the expiration date of the fixed time period, the state engineer shall send notice by mail or by any form of electronic communication through which receipt is verifiable, to the applicant of record.

(d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water right upon a showing that:

(i) the essential purpose of the original application has not been satisfied;

(ii) the need for an extension is not the result of any default or neglect by the applicant;

and

(iii) the water is still available.

(e) No extension shall exceed the time necessary to satisfy the primary purpose of the original application.

(f) A request for extension of the fixed time period must be filed in writing in the office of the state engineer on or before the expiration date of the application.

(3) (a) Before the approval of any application for the appropriation of water from navigable lakes or streams of the state that contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state.

(b) The approval of an application shall be revoked in the event of the failure of the applicant to comply with terms of the royalty contract.

73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Use of Water Evidenced by Shares of Stock - Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.

(1) A water right appurtenant to land shall pass to the grantee of the land unless the grantor:

(a) specifically reserves the water right or any part of the water right in the land conveyance document;

(b) conveys a part of the water right in the land conveyance document; or

(c) conveys the water right in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.

(2) The state engineer shall consider documents recorded and relied upon by the county recorder to maintain a tract index described in Section 17-21-6 to be effective in the conveyance of appurtenant water rights by appurtenant.

~~(3)~~ (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.

~~(4)~~ In any conveyance, the grantee assumes the obligation for any unpaid assessment.

~~(5)~~ The right to the use of water evidenced by shares of stock in a corporation shall not be deemed appurtenant to land and the shares of stock shall transfer as provided by Section 71-1-10 (2) unless expressly provided otherwise in the corporation's articles of incorporation or bylaws.

~~(6)~~ (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.

ENACT §57-13a-104

**ABANDONMENT OF PRESCRIPTIVE
EASEMENT FOR WATER CONVEYANCE**

(1) The holder of a prescriptive easement for a water conveyance established as provided by Section 57-13a-102 may abandon all or a specific portion of the prescriptive easement thereby extinguishing the water user's prescriptive easement for the water conveyance in accordance with this Section.

(2) The holder of a prescriptive easement for a water conveyance shall file in the office of the county recorder of each county in which the easement or the portion to be abandoned is located a notice of intent to abandon the easement describing the easement or portions thereof that are to be abandoned, and:

(a) Publish a copy of the notice of abandonment in newspaper of general circulation in the county in which the easement or the portion to be abandoned is located for once a week for two consecutive weeks; and

(b) Post a copy of the notice of abandonment in three public places within the area generally served by the water conveyance or portions thereof to be abandoned.

(3) Forty-five days after the last date of publication, the holder of a prescriptive easement for a water conveyance shall file in the office of the county recorder of each county in which the easement or the portion abandoned is located a notice of abandonment with the same description as set forth in section 2 herein.

(4) The abandonment of a prescriptive easement for a water conveyance established as provided by Section 57-13a-102 as provided in this Section shall affect only the holder's interest in the abandoned easement and shall not affect the rights of other water users or others, if any, who may have established a legal right to have water delivered or discharged through the water conveyance and the easement.

(5) The prescriptive easement shall be deemed abandoned by the holder thereof upon the filing of the notice of abandonment required by Section (3), subject to the rights other water users or others, if any, who may have established a legal right to have water delivered or discharged through the water conveyance facility.

(6) Upon abandonment of a prescriptive easement as provided in this Section, the owner of the servient estate whose land was encumbered by the now abandoned prescriptive easement may,

(a) Reclaim the land area occupied by the now abandoned easement and resume full utilization of the land free of this encumbrance and without liability to the prior holder of the now abandoned easement, provided that no other water users or others, if any, have an established legal right to have water delivered or discharged through the water conveyance facility,

73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Use of Water Evidenced by Shares of Stock - Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.

(1) A water right appurtenant to land shall pass to the grantee of the land unless the grantor:

(a) specifically reserves the water right or any part of the water right in the land conveyance document;

(b) conveys a part of the water right in the land conveyance document; or

(c) conveys the water right in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.

(2) The state engineer shall consider documents recorded and relied upon by the county recorder to maintain a tract index described in Section 17-21-6 to be effective in the conveyance of appurtenant water rights.

(3) (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.

(4) In any conveyance, the grantee assumes the obligation for any unpaid assessment.

(5) The right to the use of water evidenced by shares of stock in a corporation shall not be appurtenant to land and the shares of stock shall transfer as provided by Section 71-1-10 (2) unless expressly provided otherwise in the corporation's articles of incorporation or bylaws.

(6) (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.

1 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven**
2 **years -- Nonuse application.**

3 (1) As used in this section:

4 (a) "Public entity" means:

5 (i) the United States;

6 (ii) an agency of the United States;

7 (iii) the state;

8 (iv) a state agency;

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

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

11 (b) "Public water supplier" means an entity that:

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

14 (ii) is:

15 (A) a public entity;

16 (B) a water corporation, as defined in Section [54-2-1](#), that is regulated by the Public Service
17 Commission;

18 (C) a community water system:

19 (I) that:

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

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

22 (II) whose voting members:

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

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

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

28 (D) a water users association:

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

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

32 (c) "Shareholder" is as defined in Section [73-3-3.5](#).

33 (d) "Water company" is as defined in Section [73-3-3.5](#).

34 (e) "Water supply entity" means an entity that supplies water as a utility service or for
35 irrigation purposes and is also:

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

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

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

40 (2) (a) When an appropriator or the appropriator's successor in interest abandons or ceases to
41 use all or a portion of a water right for a period of seven years, the water right or the unused
42 portion of that water right is subject to forfeiture in accordance with Subsection (2)(d), ~~unless~~
43 ~~the appropriator or the appropriator's successor in interest files a nonuse application with the~~
44 ~~state engineer.~~

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

47 (i) The filing and approval of a nonuse application, or successive nonuse applications,
48 protects a water right from forfeiture for nonuse prospectively from the date the nonuse
49 application, or a succession of nonuse applications, is filed until the approved nonuse application
50 expires and is not renewed.

51 (ii) The approval of a nonuse application does not protect a water right from total or
52 partial forfeiture for nonuse for the required seven years for which the appropriator or the
53 appropriator's successor in interest has no defense, and the required period of nonuse without a
54 defense predates the filing and approval of the nonuse application or successive nonuse
55 applications.

56 (cb) (i) A nonuse application may be filed on all or a portion of the water right, including
57 water rights held by a water company.

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

60 (de) (i) A water right or a portion of the water right may not be forfeited unless a judicial
61 action to declare the right forfeited is commenced within 15 years from the end of the latest
62 period of nonuse of at least seven years.

63 (ii) If forfeiture is asserted in an action for general determination of rights in conformance
64 with the provisions of Chapter 4, Determination of Water Rights, the 15-year limitation period
65 shall commence to run back in time from the date the state engineer's proposed determination of
66 rights is served upon each claimant.

67 (iii) A decree entered in an action for general determination of rights under Chapter 4,
68 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any
69 right determined to be valid in the decree, but does not bar a claim for periods of nonuse that
70 occur after the entry of the decree.

71 (iv) A proposed determination by the state engineer in an action for general determination of
72 rights under Chapter 4, Determination of Water Rights, bars a claim of forfeiture for prior
73 nonuse against any right proposed to be valid, unless a timely objection has been filed within the
74 time allowed in Chapter 4, Determination of Water Rights.

75 (v) If in a judicial action a court declares a water right forfeited, on the date on which the
76 water right is forfeited:

77 (A) the right to use the water reverts to the public; and

78 (B) the water made available by the forfeiture:

79 (I) first, satisfies other water rights in the hydrologic system in order of priority date; and

80 (II) second, may be appropriated as provided in this title.

81 (ed) This section applies whether the unused or abandoned water or a portion of the water is:

82 (i) permitted to run to waste; or

83 (ii) used by others without right with the knowledge of the water right holder.

84 (fe) This section does not apply to:

85 (i) the use of water according to a lease or other agreement with the appropriator or the
86 appropriator's successor in interest;

87 (ii) a water right if its place of use is contracted under an approved state agreement or federal
88 conservation following program;

89 (iii) those periods of time when a surface water or groundwater source fails to yield sufficient
90 water to satisfy the water right;

91 (iv) a water right when water is unavailable because of the water right's priority date;

92 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with Title

93 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
94 (A) the water is stored for present or future use; or
95 (B) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or
96 the appropriator's successor in interest cannot reasonably correct;
97 (vi) a water right if a water user has beneficially used substantially all of the water right
98 within a seven-year period, provided that this exemption does not apply to the adjudication of a
99 water right in a general determination of water rights under Chapter 4, Determination of Water
100 Rights;
101

102 - (vii) except as provided by Subsection (2)(~~hg~~), a water right:
103 (A) (I) owned by a public water supplier;
104 (II) represented by a public water supplier's ownership interest in a water company; or
105 (III) to which a public water supplier owns the right of use; and
106 (B) conserved or held for the reasonable future water requirement of the public, which is
107 determined according to Subsection (2)(~~gf~~);
108 (viii) a supplemental water right during a period of time when another water right available to
109 the appropriator or the appropriator's successor in interest provides sufficient water so as to not
110 require use of the supplemental water right; or
111 (ix) a water right subject to an approved change application where the applicant is diligently
112 pursuing certification.

113 (~~gf~~) (i) The reasonable future water requirement of the public is the amount of water needed
114 in the next 40 years by the persons within the public water supplier's projected service area based
115 on projected population growth or other water use demand.

116 (ii) For purposes of Subsection (2)(~~gf~~)(i), a community water system's projected service area:
117 (A) is the area served by the community water system's distribution facilities; and
118 (B) expands as the community water system expands the distribution facilities in accordance
119 with Title 19, Chapter 4, Safe Drinking Water Act.

120 (~~hg~~) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection
121 (2)(e)(vii) applies if:

122 (i) the public water supplier submits a change application under Section [73-3-3](#); and
123 (ii) the state engineer approves the change application.

124 (3) (a) The state engineer shall furnish a nonuse application form requiring the following
125 information:

126 (i) the name and address of the applicant;
127 (ii) a description of the water right or a portion of the water right, including the point of
128 diversion, place of use, and priority;
129 (iii) the quantity of water;
130 (iv) the period of use;
131 (v) the extension of time applied for;
132 (vi) a statement of the reason for the nonuse of the water; and
133 (vii) any other information that the state engineer requires.

134 (b) ~~(i)~~ Filing the nonuse application extends the time during which nonuse may continue until
135 the state engineer issues an order on the nonuse application.

136 ~~(ii) Approval of a nonuse application protects a water right from forfeiture for nonuse from
137 the application's filing date until the approved application's expiration date.~~

138 ~~(c)~~ (i) Upon receipt of the application, the state engineer shall publish a notice of the

139 application once a week for two successive weeks:
140 (A) in a newspaper of general circulation in the county in which the source of the water
141 supply is located and where the water is to be used; and
142 (B) as required in Section [45-1-101](#).
143 (ii) The notice shall:
144 (A) state that an application has been made; and
145 (B) specify where the interested party may obtain additional information relating to the
146 application.
147 (d) Any interested person may file a written protest with the state engineer against the
148 granting of the application:
149 (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
150 (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
151 (e) In any proceedings to determine whether the nonuse application should be approved or
152 rejected, the state engineer shall follow the procedures and requirements of Title 63G, Chapter 4,
153 Administrative Procedures Act.
154 (f) After further investigation, the state engineer may approve or reject the application.
155 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water right
156 for a period of time not exceeding seven years if the applicant shows a reasonable cause for
157 nonuse.
158 (b) A reasonable cause for nonuse includes:
159 (i) a demonstrable financial hardship or economic depression;
160 (ii) the initiation of water conservation or efficiency practices, or the operation of a
161 groundwater recharge recovery program approved by the state engineer;
162 (iii) operation of legal proceedings;
163 (iv) the holding of a water right or stock in a mutual water company without use by any water
164 supply entity to meet the reasonable future requirements of the public;
165 (v) situations where, in the opinion of the state engineer, the nonuse would assist in
166 implementing an existing, approved water management plan; or
167 (vi) the loss of capacity caused by deterioration of the water supply or delivery equipment if
168 the applicant submits, with the application, a specific plan to resume full use of the water right
169 by replacing, restoring, or improving the equipment.
170 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify
171 the applicant by mail or by any form of electronic communication through which receipt is
172 verifiable, of the date when the nonuse application will expire.
173 (b) An applicant may file a subsequent nonuse application in accordance with this section.
174 (6) Sections (2)(b) (i), and (ii) are to be applied retroactively to any nonuse application filed on
175 or after May 5, 2008.