

**ADJUDICATION OF WATER RIGHTS**

2013 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill makes changes to the procedure for a general adjudication of water rights under Title 73, Water and Irrigation.

**Highlighted Provisions:**

This bill:

- ▶ permits the state engineer, in a general adjudication of water rights under Title 73, Water and Irrigation, to divide a general adjudication area into divisions and subdivisions and proceed with the general adjudication action individually for each division or subdivision;
- ▶ describes requirements, in a general adjudication of water rights under Title 73, Water and Irrigation, for the state engineer to:
  - file proof of the publication of notice of commencement of the general adjudication with the district court;
  - search and update the records of the state engineer's office to locate claimants to the general adjudication;
  - serve summons to an individual known claimant, general unknown claimants, and the United States as a claimant;
  - give notice of further proceedings;
  - give notice of completion of the state engineer's survey of the general adjudication area, division, or subdivision for a claimant's water right;
  - compile submitted statements of claim and file them with the district court; and
  - give notice of completion of the state engineer's report and proposed determination;
- ▶ describes requirements, in a general adjudication of water rights under Title 73, Water and Irrigation, for a claimant to:
  - file a written statement of claim to claim a water right in the general adjudication; and

- 33           • file an objection to the state engineer's report and proposed determination; and  
 34           ▶ makes technical changes.

35 **Money Appropriated in this Bill:**

36           None

37 **Other Special Clauses:**

38           None

39 **Utah Code Sections Affected:**

40 AMENDS:

41           **73-4-1**, as last amended by Laws of Utah 2001, Chapter 107

42           **73-4-3**, as last amended by Laws of Utah 2009, Chapters 365 and 388

43           **73-4-4**, as last amended by Laws of Utah 2009, Chapter 388

44           **73-4-5**, Utah Code Annotated 1953

45           **73-4-9**, as last amended by Laws of Utah 2009, Chapter 388

46           **73-4-11**, as last amended by Laws of Utah 2010, Chapter 320

47           **73-4-22**, Utah Code Annotated 1953

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

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

51           **73-4-1. Action for a general adjudication of water rights -- Requirements for state**  
 52 **engineer to file -- Adjudication area divisions.**

53           ~~[(1) Upon a verified petition to the state engineer, signed by five or more or a majority~~  
 54 ~~of water users upon any stream or water source, requesting the investigation of the relative~~  
 55 ~~rights of the various claimants to the waters of such stream or water source, it shall be the duty~~  
 56 ~~of the state engineer, if upon such investigation he finds the facts and conditions are such as to~~  
 57 ~~justify a determination of said rights, to file in the district court an action to determine the~~  
 58 ~~various rights.]~~

59           (1) (a) Five or more or a majority of water users of a water source may submit a signed,  
 60 verified petition to the state engineer requesting an investigation of the rights of all claimants to  
 61 the water of the water source.

62           (b) Upon receipt of a petition described in Subsection (1)(a), the state engineer shall:

63           (i) investigate whether the facts and circumstances of the water source and its

64 claimants justify a general determination of water rights; and

65 (ii) if justified, file an action in the district court for a general adjudication of water  
66 rights.

67 (c) In any suit involving water rights the court may order an investigation and survey  
68 by the state engineer of all the water rights on the source or system involved.

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

71 ~~[(b)]~~ (2) (a) The executive director of the Department of Environmental Quality, with  
72 the concurrence of the governor, may request that the state engineer file in the district court an  
73 action to determine the various water rights in the stream, water source, or basin for an area  
74 within the exterior boundaries of the state for which any person or organization or the federal  
75 government is actively pursuing or processing a license application for a storage facility or  
76 transfer facility for high-level nuclear waste or greater than class C radioactive waste.

77 ~~[(c)]~~ (b) Upon receipt of a request made under Subsection (2)[(b)](a), the state engineer  
78 shall file [the] an action in the district court for a general adjudication of water rights.

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

82 (3) When an action for a general adjudication of water rights for a certain area is filed  
83 in district court, the state engineer may divide the general adjudication area into divisions and  
84 subdivisions if the state engineer:

85 (a) fulfills the requirements of this chapter individually for each division or  
86 subdivision; and

87 (b) petitions the court to incorporate the decrees for all the divisions and subdivisions  
88 within a general adjudication area into a final decree for the entire general adjudication area.

89 Section 2. Section 73-4-3 is amended to read:

90 **73-4-3. Notice and procedure for general adjudication of water rights -- Survey of**  
91 **water source -- Statements of claim -- Incomplete records.**

92 (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or  
93 by any person claiming the right to use the waters of any river system, lake, underground water  
94 basin, or other natural source of supply that involves a determination of the rights to the major

95 part of the water of the source of supply or the rights of 10 or more of the claimants of the  
96 source of supply, the clerk of the district court shall notify the state engineer that a suit has  
97 been filed.

98 (2) (a) The state engineer then shall, for each general adjudication area, division, or  
99 subdivision, give notice of commencement of action to the claimants by publishing notice:

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

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

103 (b) The notice of commencement of action shall state:

104 (i) an action has been filed;

105 (ii) the name of the action;

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

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

108 [~~(c) Claimants to the use of water shall notify the state engineer within 90 days from~~  
109 ~~the date notice is given of their names and addresses.]~~

110 [~~(d) After the expiration of 90 days, the state engineer shall prepare a list that shall~~  
111 ~~include the names and addresses of all claimants then of record in the state engineer's office~~  
112 ~~and all claimants who have notified the state engineer of their addresses, and this list shall be~~  
113 ~~certified by the state engineer as complete and filed with the clerk of the court.]~~

114 [~~(e) At any time during the action:]~~

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

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

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

121 [~~(i) If any claimant appears in this action by an attorney, the clerk shall note on the list~~  
122 ~~the address of the attorney.]~~

123 [~~(j) After the list is filed by the state engineer, notice of further proceedings, after~~  
124 ~~service of summons, may be given without court order by mailing a copy thereof to the persons~~  
125 ~~listed at the addresses listed and by mailing a copy thereof to any attorney of record for any~~

126 such person, and notice may be given to the listed persons and to all other claimants by  
127 publication in the manner and for the time prescribed by order of the district court and in  
128 accordance with Subsection (2)(a).]

129 (c) The state engineer shall file proof of the publication of notice of commencement of  
130 action with the district court.

131 (3) The state engineer shall, for each general adjudication area, division, or  
132 subdivision, search the records of the state engineer's office to locate all possible claimants, and  
133 continue to update the records during the adjudication and search for additional claimants.

134 (4) In accordance with Section 73-4-4, the state engineer shall serve a summons to each  
135 claimant of record in the state engineer's office within a general adjudication area, division, or  
136 subdivision.

137 (5) (a) After serving summons to a claimant, the state engineer shall give notice of  
138 further proceedings to:

139 (i) the claimant; and

140 (ii) an attorney who enters an appearance in court for the claimant.

141 (b) A court order is not required as a prerequisite for giving notice under Subsection  
142 (5)(a).

143 (c) The state engineer shall give the notice described in Subsection (5)(a):

144 (i) electronically, if the state engineer can verify the claimant's receipt;

145 (ii) by mail;

146 (iii) by personal service; or

147 (iv) if the notice is for the benefit of the claimants generally, by publishing the notice.

148 (d) Notice given by mail is complete when the notice is mailed.

149 (6) Except as provided in Subsection (8)(d)(ii), if the state engineer serves a notice  
150 required by this chapter, the state engineer shall, before the day on which the final decree for  
151 the general adjudication area, division, or subdivision is filed, file with the clerk of the district  
152 court a certificate of service that contains the name and address of the claimant served with the  
153 notice.

154 ~~(3)~~ (7) After [the statement or list is filed] publishing notice of commencement of an  
155 action, the state engineer shall:

156 (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other

157 works diverting water from the water source; and

158 (b) hold a public meeting in the survey area to inform a water right claimant of the  
159 survey.

160 ~~[(4)(a) As soon as the survey is complete, the state engineer shall file notice of~~  
161 ~~completion with the clerk and give notice by mail or by personal service to all claimants whose~~  
162 ~~names appear on the list that:]~~

163 ~~[(i) the survey is complete;]~~

164 ~~[(ii) their claims are due within 90 days from the date of notice; and]~~

165 ~~[(iii) within 90 days after service of the notice, each claimant must file a written~~  
166 ~~statement with the clerk of the court setting forth the claimant's respective claim to the use of~~  
167 ~~the water.]~~

168 ~~[(b) Notice given by mail is complete when the notice is mailed:]~~

169 (8)(a) After the survey described in Subsection (7) is complete for a claimant, the state  
170 engineer shall give notice, in accordance with Subsection (5), of completion of survey to the  
171 claimant.

172 (b) Notice of completion of survey shall include:

173 (i) a statement that:

174 (A) the state engineer has investigated the claimant's water right; and

175 (B) a claimant who desires to claim a water right in the action shall, in accordance with  
176 Section 73-4-5, submit a written statement of claim within 90 days after the day on which the  
177 notice is issued; and

178 (ii) a statement of claim form that the claimant must complete in order to comply with  
179 the provisions of Section 73-4-5.

180 (c) A claimant served with a notice of completion of survey who desires to claim a  
181 water right in the action shall file a written statement of claim in accordance with Section  
182 73-4-5.

183 (d)(i) The state engineer shall compile the statements of claim described in Subsection  
184 (8)(c) and file them with the clerk of the district court.

185 (ii) If the state engineer files a claimant's statement of claim with the district court in  
186 accordance with Subsection (8)(d)(i), the state engineer is not required to file a certificate of  
187 service that relates to the notice of completion of survey for that claimant.

188           ~~[(5)]~~ (9) When a suit has been filed by the state engineer as provided by Section  
189 73-4-1, or by any person involving the major part of the waters of any river system, lake,  
190 underground water basin, or other source of supply, or the rights of 10 or more of the water  
191 claimants of the source of supply, whether the suit is filed prior to or after the enactment  
192 hereof, the state engineer, upon receiving notice, shall examine the records of the state  
193 engineer's office with respect to the water source involved, and if they are incomplete to make  
194 such further investigation and survey as may be necessary for the preparation of the report and  
195 recommendation as required by Section 73-4-11.

196           ~~[(6)]~~ (10) In all such cases the court shall proceed to determine the water rights  
197 involved in the manner provided by this chapter, and not otherwise.

198           Section 3. Section 73-4-4 is amended to read:

199           **73-4-4. Summons for general adjudication of water rights -- Requirements to**  
200 **serve summons individually and generally -- Statement of claim requirement.**

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

205           ~~[(b) Upon the filing by the state engineer of an affidavit that the state engineer has~~  
206 ~~searched the records of the state engineer's office and has listed all names as required by~~  
207 ~~Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state~~  
208 ~~engineer of their names and addresses, summons may be served on all other persons and~~  
209 ~~claimants not listed on said list by publication of summons:]~~

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

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

213           (1) (a) The state engineer shall, by mail, serve a summons to a claimant of record in the  
214 state engineer's office within a general adjudication area, division, or subdivision.

215           (b) (i) The state engineer may serve, by publication, a general summons to claimants in  
216 a general adjudication area, division, or subdivision, who are not of record in the state  
217 engineer's office, if the state engineer files an affidavit with the district court, verifying that the  
218 state engineer has, in accordance with Section 73-4-3, searched the records of the state

219 engineer's office for claimants in the general adjudication area, division, or subdivision.

220 (ii) The state engineer shall publish, in accordance with the Utah Rules of Civil

221 Procedure, a general summons described in Subsection (1)(b)(i):

222 (A) once a week for five successive weeks in one or more newspapers, determined by

223 the judge of the district court as most likely to give notice to the claimants served; and

224 (B) for five weeks, in accordance with Section 45-1-101.

225 ~~[(c)]~~ (iii) Service of a general summons is completed upon the last required date of

226 ~~[the]~~ publication.

227 ~~[(d)]~~ (c) The summons shall be substantially in the following form:

228 "In the District Court of ..... County, State of Utah, in the matter of the general

229 adjudication of water rights in the described water source.

230

#### SUMMONS

231 The State of Utah to the said defendant:

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

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

247 (2) If the state engineer is required, under this section, to serve a summons on the

248 United States, the state engineer shall serve the summons in accordance with federal law.

249 Section 4. Section **73-4-5** is amended to read:

250           **73-4-5. Requirements for statement of claim in general adjudication of water**  
251 **rights.**

252           Each person claiming a right to use ~~[any]~~ water of ~~[such]~~ a river system or water source  
253 shall, within 90 days after the ~~[completed service of the]~~ day on which notice of completion of  
254 survey ~~[prescribed by]~~ described in Section 73-4-3 ~~[hereof, file in the office of]~~ is served, file  
255 with the state engineer or the clerk of the district court a [statement in writing which shall be  
256 signed and verified by the oath of the claimant, and shall include as near as may be the  
257 following: The] written statement of claim, signed, and verified under oath, by the claimant,  
258 that includes:

- 259           (1) the name and [post-office] address of the [person making the claim] claimant;  
260           (2) the nature of [the] use on which the claim of appropriation is based;  
261           (3) the flow of water used in cubic feet per second, or the quantity of water stored in  
262 acre-feet, and the time during which [it] the flow or stored water has been used each year;  
263           (4) the name of the stream or other source from which the water is diverted, the point  
264 on [such] the stream or source where the water is diverted, and a description of the nature of  
265 the diverting works;  
266           (5) the date when the first work for diverting the water [was begun,] began, and a  
267 description of the nature of [such] the work;  
268           (6) the date when the water was first used, the flow in cubic feet per second, or the  
269 quantity of water stored in acre-feet, and the time [during which] the water was used during the  
270 first year; [and]  
271           (7) the place and manner of [present] current use; and [such]  
272           (8) other facts [as will] that clearly define the extent and nature of the appropriation  
273 claimed, or [as may be] that are required by the [blank] written form [which shall be furnished  
274 by the state engineer under the direction of the court] provided by the state engineer with the  
275 notice of completion of survey.

276           Section 5. Section **73-4-9** is amended to read:

277           **73-4-9. Failure to file statement -- Relief.**

278           The filing of each statement by a claimant shall be considered notice to all persons of  
279 the claim of the party making the same, and any person failing to make and deliver such  
280 statement of claim to the state engineer or the clerk of the court within the time prescribed by

281 law shall be forever barred and estopped from subsequently asserting any rights, and shall be  
282 held to have forfeited all rights to the use of the water theretofore claimed by him; provided,  
283 that any claimant, upon whom no other service of said notice shall have been made than by  
284 publication in a newspaper and as required in Section 45-1-101, may apply to the court for  
285 permission to file a statement of claim after the time therefor has expired, and the court may  
286 extend the time for filing such statement, not exceeding six months from the publication of said  
287 notice; but, before said time is extended, the applicant shall give notice by publication in a  
288 newspaper having general circulation and as required in Section 45-1-101 on such river system  
289 or near the water source to all other persons interested in the water of such river system or  
290 water source, and shall make it appear to the satisfaction of the court that during the pendency  
291 of the proceedings he had no actual notice thereof in time to appear and file a statement and  
292 make proof of his claim; and all parties interested may be heard as to the matter of his actual  
293 notice of the pendency of such proceedings.

294 Section 6. Section **73-4-11** is amended to read:

295 **73-4-11. Report and recommendation by engineer to court -- Notice -- Public**  
296 **meeting.**

297 (1) Within 30 days after the [~~expiration of the 90 days allowed for filing statements of~~  
298 ~~claims~~] last day on which a claimant may file a statement of claim in accordance with Section  
299 73-4-5, the state engineer shall begin to tabulate the facts contained in the statements filed and  
300 to investigate, whenever the state engineer shall consider necessary, the facts set forth in the  
301 statements by reference to the surveys already made or by further surveys, and shall as  
302 expeditiously as possible report to the court a recommendation of how all rights involved shall  
303 be determined.

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

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

309 [~~(b) mail or deliver a copy of the report and proposed determination to each claimant~~  
310 ~~with notice that any claimant dissatisfied with the report and proposed determination may~~  
311 ~~within 90 days from the date of mailing or delivery file with the clerk of the district court a~~

312 ~~written objection; and]~~

313 (b) serve notice of completion of the report and proposed determination, in accordance  
314 with Subsection 73-4-3(5), to each claimant of record in the state engineer's office within the  
315 general adjudication area, division, or subdivision, that includes:

316 (i) (A) a copy of the report and proposed determination; or

317 (B) instructions on how to obtain or access an electronic copy of the report and  
318 proposed determination; and

319 (ii) a statement describing the claimant's right to file an objection to the report and  
320 proposed determination within 90 days after the day on which the notice of completion of the  
321 report and proposed determination is served; and

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

324 (3) A claimant who desires to object to the state engineer's report and proposed  
325 determination shall, within 90 days after the day on which the state engineer served the  
326 claimant notice of completion of the report and proposed determination, file a written objection  
327 to the report and proposed determination with the clerk of the district court.

328 ~~(3)]~~ (4) The state engineer shall distribute the waters from the natural streams or other  
329 natural sources:

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

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

334 Section 7. Section **73-4-22** is amended to read:

335 **73-4-22. State engineer's duty to search records for and serve summons on**  
336 **claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown**  
337 **claimants.**

338 The state engineer, throughout the pendency of proceedings, shall serve summons in the  
339 manner prescribed by Section 73-4-4 upon all claimants to the use of water in the described  
340 source embraced by said action, whenever the names and addresses of said persons come to the  
341 attention of the state engineer. ~~[The names and addresses of such persons so served shall be~~  
342 ~~added to the list prescribed by Section 73-4-3 hereof.]~~ Immediately after the notice of the

343 proposed determination is given, in accordance with Section 73-4-11 hereof, the state engineer  
344 shall diligently search for the names and addresses of any claimants to water in the source  
345 covered by the proposed determination who have not been previously served with summons  
346 other than by publication, and any such persons located shall forthwith be served with  
347 summons, and after the state engineer has exhausted his search for other claimants he shall  
348 make such fact known to the district court by affidavit and the clerk of the district court shall  
349 again publish summons five times, once each week, for five successive weeks which said  
350 service shall be binding upon all unknown claimants.