

1 **WATER RIGHTS ADJUDICATION**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James R. Gowans**

6 Senate Sponsor: Dennis E. Stowell

7

LONG TITLE

8 **General Description:**

9 This bill amends a provision relating to the general adjudication of water rights.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows the state engineer to petition the court to amend or substitute a list of
- 13 claimants in an action to determine water rights;
- 14 ▶ allows the clerk of the court to change an address when the state engineer's records
- 15 are amended;
- 16 ▶ requires the state engineer to hold public meetings; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **73-4-3**, as last amended by Laws of Utah 2007, Chapter 136

25 **73-4-11**, as last amended by Laws of Utah 2007, Chapter 136



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

29 Section 1. Section **73-4-3** is amended to read:

30 **73-4-3. Procedure for action to determine rights -- Notice to and list of claimants**
31 **-- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice**
32 **of completion.**

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

39 (2) (a) The state engineer then shall give notice to the claimants by publishing notice
40 once a week for two consecutive weeks in a newspaper designated by the court as most likely
41 to give notice to such claimants.

42 (b) The notice shall state:

43 (i) an action has been filed;

44 (ii) the name of the action;

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

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

47 (c) Claimants to the use of water shall notify the state engineer within 90 days from the
48 date notice is given of their names and addresses.

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

53 (e) At any time during the action:

54 [~~(e) The~~] (i) the court upon petition may by order permit the addition of names and
55 addresses to [this list at any time during the pendency of the action, and] the list prepared under
56 Subsection (2)(d);

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

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

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

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

68 (3) After the statement or list is filed, the state engineer shall:

69 (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other
 70 works diverting water ~~[therefrom:]~~ from the water source; and

71 (b) hold a public meeting in the survey area to inform a ~~H~~→ [person diverting water
 71a from the
 72 water source] a water right claimant ←~~H~~ of the survey.

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

76 (i) the survey is complete;

77 (ii) their claims are due within 90 days from the date of notice; and

78 (iii) within 90 days after service of the notice, each claimant must file a written
 79 statement with the clerk of the court setting forth the claimant's respective claim to the use of
 80 the water.

81 (b) Notice given by mail is complete when the notice is mailed.

82 (5) When a suit has been filed by the state engineer as provided by Section 73-4-1, or
 83 by any person involving the major part of the waters of any river system, lake, underground
 84 water basin, or other source of supply, or the rights of ten or more of the water claimants of the
 85 source of supply, whether the suit is filed prior to or after the enactment hereof, the state
 86 engineer, upon receiving notice, shall examine the records of the state engineer's office with
 87 respect to the water source involved, and if they are incomplete to make such further
 88 investigation and survey as may be necessary for the preparation of the report and
 89 recommendation as required by Section 73-4-11.

90 (6) In all such cases the court shall proceed to determine the water rights involved in
 91 the manner provided by this chapter, and not otherwise.

92 Section 2. Section **73-4-11** is amended to read:

93 **73-4-11. Report and recommendation by engineer to court.**

94 (1) Within 30 days after the expiration of the 90 days allowed for filing statements of
 95 claims, the state engineer shall begin to tabulate the facts contained in the statements filed and
 96 to investigate, whenever the state engineer shall consider necessary, the facts set forth in [~~said~~]
 97 the statements by reference to the surveys already made or by further surveys, and shall as
 98 expeditiously as possible make a report to the court with the recommendation of how all rights
 99 involved shall be determined.

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

103 (a) formulate a report and a proposed determination of all rights to the use of the water
 104 of [~~such~~] the river system or water source[~~, and~~];

105 (b) mail ~~H→~~ **H→ or deliver ←H** a copy of the [~~same shall be mailed~~] report and proposed
 105a determination to
 106 each claimant with notice that any claimant dissatisfied [~~therewith~~] with the report and
 107 proposed determination may within 90 days from [~~such~~] the date of mailing ~~H→~~ **H→ or deliver ←H**
 107a file with the clerk
 108 of the district court a written objection [~~thereto duly~~] verified on oath[~~;~~]; and
 109 (c) hold a public meeting in the area covered by the report and proposed determination
 110 to describe the report and proposed determination to the claimants.

111 (3) The state engineer shall distribute the waters from the natural streams or other
 112 natural sources;

113 (a) in accordance with the proposed determination or modification [~~thereof~~] to the
 114 proposed determination by court order until a final decree is rendered by the court; [~~provided,~~]
 115 or

116 (b) if the right to the use of [~~said~~] the waters has been [~~theretofore~~] decreed or
 117 adjudicated, [~~said waters shall be distributed~~] in accordance with [~~such~~] the decree until the
 118 [~~same~~] decree is reversed, modified, vacated, or otherwise legally set aside.

Legislative Review Note

as of 2-23-09 10:20 AM

Office of Legislative Research and General Counsel

H.B. 383 - Water Rights Adjudication Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
