

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,
34 or by any person claiming the right to use the waters of any river system, lake, underground
35 water basin, or other natural source of supply that involves a determination of the rights to the
36 major part of the water of the source of supply or the rights of ten or more of the claimants of
37 the 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
48 the 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
56 under 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
65 persons listed at the addresses listed and by mailing a copy thereof to any attorney of record
66 for any such person, and notice may be given to [~~such~~] the listed persons and to all other
67 claimants by publication in the manner and for the time prescribed by order of the district
68 court.

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

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

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

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

77 (i) the survey is complete;

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

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

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

83 (5) When a suit has been filed by the state engineer as provided by Section 73-4-1, or
84 by any person involving the major part of the waters of any river system, lake, underground
85 water basin, or other source of supply, or the rights of ten or more of the water claimants of the

86 source of supply, whether the suit is filed prior to or after the enactment hereof, the state
87 engineer, upon receiving notice, shall examine the records of the state engineer's office with
88 respect to the water source involved, and if they are incomplete to make such further
89 investigation and survey as may be necessary for the preparation of the report and
90 recommendation as required by Section 73-4-11.

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

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

94 **73-4-11. Report and recommendation by engineer to court -- Notice -- Public**
95 **meeting.**

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

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

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

107 (b) ~~mail or deliver~~ a copy of the ~~[same shall be mailed]~~ report and proposed
108 determination to each claimant with notice that any claimant dissatisfied ~~[therewith]~~ with the
109 report and proposed determination may within 90 days from ~~[such]~~ the date of mailing or
110 delivery file with the clerk of the district court a written objection ~~[thereto duty]~~ verified on
111 oath~~[-]; and~~

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

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

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

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