

**WATER RIGHTS AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to water rights used for watering livestock on public land and claims to surface or underground water not already represented, and requires the Department of Natural Resources to complete a study.

**Highlighted Provisions:**

This bill:

- ▶ allows a person who holds a grazing permit from a public land agency to access and improve the permitted grazing area as necessary to beneficially use, develop, and maintain the person's water right that is appurtenant to the grazing area;
- ▶ requires the state engineer to provide copies of claims to water not already represented that are filed by the federal government to the Natural Resources, Agriculture, and Environment Interim Committee;
- ▶ requires the Department of Natural Resources to study the state's jurisdiction over water rights and report to the Natural Resources, Agriculture, and Environment Interim Committee; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a repeal date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **73-3-31**, as last amended by Laws of Utah 2009, Chapter 285

31 **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136

32 **Uncodified Material Affected:**

33 ENACTS UNCODIFIED MATERIAL



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

36 Section 1. Section **73-3-31** is amended to read:

37 **73-3-31. Water right for watering livestock on public land.**

38 (1) As used in this section:

39 (a) "Acquire" means to gain the right to use water through obtaining:

40 (i) an approved application to appropriate water; or

41 (ii) a perfected water right.

42 (b) "Allotment" means a designated area of public land available for livestock grazing.

43 (c) (i) "Beneficial user" means the person that has the right to use the grazing permit.

44 (ii) "Beneficial user" does not mean the public land agency issuing the grazing permit.

45 (d) "Grazing permit" means a document authorizing livestock to graze on an allotment.

46 (e) "Livestock" means a domestic animal raised or kept for profit or personal use.

47 (f) "Livestock watering right" means a right for:

48 (i) livestock to consume water:

49 (A) directly from the water source located on public land; or

50 (B) from an impoundment located on public land into which the water is diverted; and

51 (ii) associated uses of water related to the raising and care of livestock on public land.

52 (g) (i) "Public land" means land owned or managed by the United States or the state.

53 (ii) "Public land" does not mean land owned by:

54 (A) the Division of Wildlife Resources;

55 (B) the School and Institutional Trust Lands Administration; or

56 (C) the Division of Parks and Recreation.

57 (h) "Public land agency" means the agency that owns or manages the public land.

58 (2) On or after May 12, 2009, a livestock watering right may only be acquired by a

59 public land agency jointly with a beneficial user.

60 (3) The state engineer may not approve a change application under Section 73-3-3 for a  
61 livestock watering right without the consent of the beneficial user.

62 (4) A beneficial user may file a nonuse application under Section 73-1-4 on a livestock  
63 watering right or a portion of a livestock watering right that the beneficial user puts to  
64 beneficial use.

65 (5) A livestock watering right is appurtenant to the allotment on which the livestock is  
66 watered.

67 (6) (a) (i) A beneficial user or a public land agency may file a request with the state  
68 engineer for a livestock water use certificate.

69 (ii) The state engineer shall:

70 (A) provide the livestock water use certificate application form on the Internet; and

71 (B) allow electronic submission of the livestock water use certificate application.

72 (b) The state engineer shall grant a livestock water use certificate to:

73 (i) a beneficial user if the beneficial user:

74 (A) demonstrates that the beneficial user has a right to use a grazing permit for the  
75 allotment to which the livestock watering right is appurtenant; and

76 (B) pays the fee set in accordance with Section 73-2-14; and

77 (ii) the public land agency if the public land agency:

78 (A) (I) demonstrates that the public land agency owns a livestock watering right; or

79 (II) issues a grazing permit for the allotment to which the livestock watering right is  
80 appurtenant; and

81 (B) pays the fee set in accordance with Section 73-2-14.

82 (c) A livestock water use certificate is valid as long as the livestock watering right is:

83 (i) put to beneficial use within a seven-year time period; or

84 (ii) subject to a nonuse application approved under Section 73-1-4.

85 (7) A beneficial user may access or improve an allotment as necessary for the  
86 beneficial user to beneficially use, develop, and maintain the beneficial user's water right  
87 appurtenant to the allotment.

88 Section 2. Section **73-5-13** is amended to read:

89 **73-5-13. Claim to surface or underground water not otherwise represented --**

90 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**  
91 **action to determine validity -- Rules.**

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

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

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

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

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

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

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

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

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

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

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

132 (4) (a) [~~Upon submission by a claimant of~~] When a claimant submits a claim that is  
133 acceptably complete under Subsection (2) and [~~the deposit of money by a claimant~~] deposits  
134 money with the state engineer sufficient to pay the expenses of conducting a field investigation  
135 and publishing a notice of the claim, the state engineer shall:

136 (i) file the claim;

137 (ii) endorse the date of its receipt;

138 (iii) assign the claim a water right number; [~~and~~]

139 (iv) publish a notice of the claim following the same procedures as provided in Section  
140 73-3-6[?]; and

141 (v) if the claimant is the federal government or a federal agency, provide a copy of the  
142 claim to the members of the Natural Resources, Agriculture, and Environment Interim  
143 Committee.

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

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

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

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

151 (ii) prepare a report of the investigation.

152 (b) The report of the investigation shall:  
 153 (i) become part of the file on the claim; and  
 154 (ii) be admissible in any administrative or judicial proceeding on the validity of the  
 155 claim.

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

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

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

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

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

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

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

178 Section 3. ~~H~~→ [Division] Department ←~~H~~ of Natural Resources study of issues  
 178a related to the state's  
 179 jurisdiction over water rights.

180 The ~~H~~→ [Division] Department ←~~H~~ of Natural Resources shall:

181 (1) conduct a study of the state's jurisdiction over water rights, including:

182 (a) conflicts between the state, state agencies, political subdivisions, or citizens of the

183 state and the federal government relating to water issues; and  
184 (b) actions necessary for the state to take in order to maintain and defend its  
185 jurisdiction over water rights;  
186 (2) draft recommended legislation to address the studied issues; and  
187 (3) report the study and recommended legislation to the Natural Resources,  
188 Agriculture, and Environment Interim Committee before November 30, 2013.  
189 Section 4. **Repeal date.**  
190 Section 3, ~~H~~→ **[Division] Department** ←~~H~~ of Natural Resources study of issues  
190a related to the state's  
191 jurisdiction over water rights, is repealed on November 30, 2013.

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**Legislative Review Note**  
as of 2-28-13 6:14 AM

**Office of Legislative Research and General Counsel**