

DIVISION OF WATER RIGHTS AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions of Title 73, Water and Irrigation, related to conveyance of water rights, use of water evidenced by shares of stock, and water rights appurtenant to land.

Highlighted Provisions:

This bill:

- ▶ requires the state engineer to consider a recorded water rights addendum, forwarded by the county recorder, as a report of water right conveyance;
- ▶ limits the method of transfer of a right to use water evidenced by shares of stock in a corporation;
- ▶ requires the state engineer to consider certain documents recorded by a county recorder as a conveyance of a water right appurtenant to land; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-10, as last amended by Laws of Utah 2010, Chapter 70

73-1-11, as last amended by Laws of Utah 2010, Chapter 70

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

31 Section 1. Section **73-1-10** is amended to read:

32 **73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording**
33 **of deed -- Report of water right conveyance.**

34 (1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a
35 diligence claim to the use of surface or underground water, or a water user's claim filed in
36 general determination proceedings, shall be transferred by deed in substantially the same
37 manner as is real estate.

38 (b) The deed must be recorded in the office of the recorder of the county where the
39 point of diversion of the water is located and in the county where the water is used.

40 (c) A recorded deed of a water right shall from the time of its recording in the office of
41 the county recorder constitute notice of its contents to all persons.

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

44 (ii) The state engineer shall consider a water rights addendum that is recorded and
45 forwarded to the state engineer by a county recorder, in accordance with Section 57-3-109, as a
46 submitted report of water right conveyance under Subsection (3).

47 (2) The right to the use of water evidenced by shares of stock in a corporation shall be
48 transferred in accordance with the procedures applicable to securities set forth in Title 70A,
49 Chapter 8, Uniform Commercial Code - Investment Securities.

50 (3) (a) To update water right ownership on the records of the state engineer, a water
51 right owner shall submit a report of water right conveyance to the state engineer.

52 (b) The report of water right conveyance shall be on forms provided by the state
53 engineer.

54 (c) The report shall be prepared by:

55 (i) or prepared under the direction of and certified by, any of the following persons
56 licensed in Utah:

57 (A) an attorney;

- 58 (B) a professional engineer;
- 59 (C) a title insurance producer; or
- 60 (D) a professional land surveyor; or
- 61 (ii) the water right owner as authorized by rule of the state engineer.
- 62 (d) The filing and processing of a report of water right conveyance with the state
- 63 engineer is neither an adjudication of water right ownership nor an opinion as to title or validity
- 64 of the water right.

- 65 (e) The state engineer shall adopt rules that specify:
- 66 (i) the information required in a report of water right conveyance; and
- 67 (ii) the procedures for processing the reports.

68 Section 2. Section 73-1-11 is amended to read:

69 **73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions --**
 70 **Conveyance of a portion of irrigated land -- Right to the use of water evidenced by shares**
 71 **of stock -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial**
 72 **conveyances of water and land.**

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

75 [~~(a)~~] (i) specifically reserves the water right or any part of the water right in the land
 76 conveyance document;

77 [~~(b)~~] (ii) conveys a part of the water right in the land conveyance document; or

78 [~~(c)~~] (iii) conveys the water right in a separate conveyance document prior to or
 79 contemporaneously with the execution of the land conveyance document.

80 (b) If a county recorder records a document that conveys a water right appurtenant to
 81 land as described in Subsection (1)(a) and relies on the document to maintain a tract index
 82 described in Section 17-21-6, the state engineer shall rely on the document as an effective
 83 conveyance of a water right appurtenant to land.

84 (2) (a) If the water right has been exercised in irrigating different parcels of land at
 85 different times, it shall pass to the grantee of a parcel of land on which the water right was

86 exercised next preceding the time the land conveyance was executed.

87 (b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.

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

89 (4) (a) The right to the use of water evidenced by shares of stock in a corporation [shall
90 not be deemed appurtenant to land] is not a water right appurtenant to land.

91 (b) On or after May 14, 2013, unless provided otherwise in a corporation's articles of
92 incorporation or bylaws, the right to the use of water evidenced by shares of stock in a
93 corporation shall transfer only as provided in Subsection 73-1-10(2).

94 (5) (a) This Subsection (5) governs land conveyances executed on or after May 4,
95 1998, and has no retrospective operation.

96 (b) For purposes of land conveyances only, a water right evidenced by any of the
97 following documents is appurtenant to land:

98 (i) a decree entered by a court;

99 (ii) a certificate issued under Section 73-3-17;

100 (iii) a diligence claim for surface or underground water filed pursuant to Section
101 73-5-13;

102 (iv) a water user's claim executed for general determination of water rights proceedings
103 conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to
104 Section 73-3-16;

105 (v) an approval for an application to appropriate water issued under Section 73-3-10;

106 (vi) an approval for an application to permanently change the place of use of water
107 issued under Section 73-3-10; or

108 (vii) an approval for an application to exchange water issued under Section 73-3-20.

109 (c) For purposes of land conveyances only, the land to which a water right is
110 appurtenant is the authorized place of use of water as described in the:

111 (i) decree;

112 (ii) certificate;

113 (iii) diligence claim;

- 114 (iv) water user's claim;
- 115 (v) approved application to appropriate water;
- 116 (vi) approved application to permanently change the place of use of water; or
- 117 (vii) approved exchange application.
- 118 (d) If a grantor conveys part of the water right in a land conveyance document pursuant
- 119 to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by
- 120 the grantor.
- 121 (e) If the land conveyed constitutes only a portion of the authorized place of use for the
- 122 water right, the amount of the appurtenant water right that passes to the grantee shall be
- 123 proportionate to the conveyed portion of the authorized place of use.
- 124 (6) Beginning July 1, 2011, a deed conveying fee simple title to land may include a
- 125 water rights addendum as provided in Section 57-3-109.