

WATER RIGHTS ADJUDICATION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill modifies the procedure for adjudicating water rights.

Highlighted Provisions:

This bill:

- ▶ requires the state engineer to identify all possible claimants in a particular area during an adjudication, if the state engineer's records are incomplete;
- ▶ modifies the procedure following the commencement of an action by the state engineer;
- ▶ states that the failure of a potential party to file a timely statement of claim constitutes a default against that party;
- ▶ requires the state engineer to authorize one extension to those seeking to file a statement of claim;
- ▶ requires the state engineer, after a full consideration of claims and an examination of the river system or water source involved, to:
 - complete a hydrographic survey map;
 - prepare a proposed determination of all rights to the use of the water and file it with the district court;
 - serve notice by publication and by mail; and
 - hold a public meeting; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **73-4-1**, as last amended by Laws of Utah 2013, Chapter 258

35 **73-4-3**, as last amended by Laws of Utah 2013, Chapter 258

36 **73-4-4**, as last amended by Laws of Utah 2013, Chapter 258

37 **73-4-5**, as last amended by Laws of Utah 2013, Chapter 258

38 **73-4-9**, as last amended by Laws of Utah 2013, Chapter 258

39 **73-4-10**, Utah Code Annotated 1953

40 **73-4-11**, as last amended by Laws of Utah 2013, Chapter 258

41 **73-4-12**, Utah Code Annotated 1953

42 **73-4-14**, Utah Code Annotated 1953

43 **73-4-15**, Utah Code Annotated 1953

44 **73-4-16**, Utah Code Annotated 1953

45 **73-4-21**, Utah Code Annotated 1953

46 **73-4-22**, as last amended by Laws of Utah 2013, Chapter 258

47 **73-4-24**, as repealed and reenacted by Laws of Utah 2010, Chapter 320

48 ENACTS:

49 **73-4-9.5**, Utah Code Annotated 1953

50 REPEALS:

51 **73-4-6**, Utah Code Annotated 1953

52 **73-4-7**, Utah Code Annotated 1953

53 **73-4-8**, Utah Code Annotated 1953



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

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

57 **73-4-1. Action for a general adjudication of water rights -- Requirements for**
58 **state engineer to file -- Adjudication area divisions.**

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

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

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

78 (c) If a general adjudication is filed in the state district court regarding the area
79 requested pursuant to Subsection (2)(a), the state engineer and the state attorney general shall
80 join the United States as a party to the action.

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

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

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

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

89 **73-4-3. Notice and procedure for general adjudication of water rights --**

90 **Statements of claim -- Incomplete records.**

91 (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or
92 by any person claiming the right to use the waters of any river system, lake, underground water
93 basin, or other natural source of supply that involves a determination of the rights to the major
94 part of the water of the source of supply or the rights of 10 or more of the claimants of the
95 source of supply, the clerk of the district court shall notify the state engineer that a suit has
96 been filed.

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

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

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

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

103 (i) an action has been filed;

104 (ii) the name of the action;

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

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

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

109 (3) The state engineer shall, for each general adjudication area, division, or
110 subdivision, search the records of the state engineer's office to [~~locate~~] identify all possible
111 claimants, and continue to update the records during the adjudication and search for additional
112 claimants.

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

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

118 (i) the claimant; and

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

120 (b) A court order is not required as a prerequisite for giving notice under Subsection

121 (5)(a).

- 122 (c) The state engineer shall give the notice described in Subsection (5)(a):
- 123 (i) electronically, if the state engineer can verify the claimant's receipt;
- 124 (ii) by mail;
- 125 (iii) by personal service; or
- 126 (iv) if the notice is for the benefit of the claimants generally, by publishing the notice.

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

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

133 (7) After publishing notice of commencement of an action, the state engineer shall ~~[(a)~~
134 ~~begin the survey of the water source and the ditches, canals, wells, tunnels, or other works~~
135 ~~diverting water from the water source; and (b)]~~ hold a public meeting in the ~~[survey area]~~
136 general adjudication area, division, or subdivision to inform a water right claimant of the
137 [survey] general adjudication process.

138 (8) (a) After the [survey] public meeting described in Subsection (7) ~~[is complete for a~~
139 ~~claimant]~~, the state engineer shall give notice to each claimant, in accordance with Subsection
140 (5), of ~~[completion of survey to the claimant]~~ the time for filing statements of claim.

141 (b) ~~[Notice of completion of survey]~~ The notice described in Subsection (8)(a) shall
142 include:

143 (i) a statement that:

144 ~~[(A) the state engineer has investigated the claimant's water right; and (B)]~~

145 (A) a claimant who desires to claim a water right in the action shall, in accordance with
146 Section 73-4-5, submit a written or electronic statement of claim within 90 days after the day
147 on which the notice is issued; and

148 (B) failure to file a timely statement of claim, as described in Section 73-4-5,
149 constitutes a default and a judgment may be entered declaring that the claimant has no right to
150 the use of water not claimed; and

151 (ii) instructions describing how to obtain or access a statement of claim form that the

152 claimant must complete in order to comply with the provisions of Section 73-4-5.

153 (c) A claimant served with [~~a notice of completion of survey~~] the notice described in
 154 Subsection (8)(a) who desires to claim a water right in the action shall file a written or
 155 electronic statement of claim in accordance with Section 73-4-5.

156 (d) (i) The state engineer shall compile the statements of claim described in Subsection
 157 (8)(c), together with any extensions of time granted by the state engineer as provided by
 158 Section 73-4-10, and file them with the [~~clerk of the~~] district court contemporaneously with the
 159 list of unclaimed rights of record, as described in Section 73-4-9.5.

160 (ii) If the state engineer files a claimant's statement of claim with the district court in
 161 accordance with Subsection (8)(d)(i), the state engineer is not required to file a certificate of
 162 service that relates to the notice [~~of completion of survey~~] described in Subsection (8)(a) for
 163 that claimant.

164 [~~(9) When a suit has been filed by the state engineer as provided by Section 73-4-1, or~~
 165 ~~by any person involving the major part of the waters of any river system, lake, underground~~
 166 ~~water basin, or other source of supply, or the rights of 10 or more of the water claimants of the~~
 167 ~~source of supply, whether the suit is filed prior to or after the enactment hereof, the state~~
 168 ~~engineer, upon receiving notice,]~~

169 (9) The state engineer shall examine the records of the state engineer's office with
 170 respect to the water source involved, and if [they] the records are incomplete [to make such],
 171 make further investigation [and survey] as may be necessary [for the preparation of the report
 172 and recommendation as required by Section 73-4-11] to identify potential claimants as required
 173 by this section.

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

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

177 **73-4-4. Summons for general adjudication of water rights -- Requirements to**
 178 **serve summons individually and generally -- Statement of claim requirement.**

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

181 (b) (i) The state engineer may serve, by publication, a general summons to claimants in
 182 a general adjudication area, division, or subdivision, who are not of record in the state

183 engineer's office, if the state engineer files an affidavit with the district court, verifying that the
184 state engineer has, in accordance with Section 73-4-3, searched the records of the state
185 engineer's office for claimants in the general adjudication area, division, or subdivision.

186 (ii) The state engineer shall publish, in accordance with the Utah Rules of Civil
187 Procedure, a general summons described in Subsection (1)(b)(i):

188 (A) once a week for five successive weeks in one or more newspapers, determined by
189 the judge of the district court as most likely to give notice to the claimants served; and

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

191 (iii) Service of a general summons is completed upon the last required date of
192 publication.

193 (c) The summons shall be substantially in the following form:

194 "In the District Court of County, State of Utah, in the matter of the general
195 adjudication of water rights in the described water source.

196 SUMMONS

197 The State of Utah to the said defendant:

198 You are hereby summoned to appear and defend the above entitled action which is
199 brought for the purpose of making a general determination of the water rights of the described
200 water source. Upon the service of this summons upon you, you will thereafter be subject to the
201 jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the
202 above entitled action and to protect your rights therein. [~~When the state engineer has~~
203 ~~completed the survey you will be given a further written notice, either in person or by mail,~~
204 The state engineer will give a further notice sent to your last-known address, that you must file
205 a [~~water users~~] statement of claim in this action setting forth the nature of your claim, and said
206 notice will specify the date upon which your [~~water users~~] statement of claim is due and
207 thereafter you must file said claim within the time set and your failure so to do will constitute a
208 default in the premises and a judgment may be entered against you declaring [~~and adjudging~~
209 that you have no right [~~in or to the waters of described water source~~] to the use of water not
210 claimed."

211 (2) If the state engineer is required, under this section, to serve a summons on the
212 United States, the state engineer shall serve the summons in accordance with federal law.

213 Section 4. Section 73-4-5 is amended to read:

214 **73-4-5. Requirements for statement of claim in general adjudication of water**
215 **rights.**

216 ~~[Each]~~ (1) Except as provided in Subsection (2), each person claiming a right to use
217 water of a river system or water source shall, within 90 days after the day on which notice of
218 ~~[completion of survey]~~ the time to file statements of claim as described in Section 73-4-3 is
219 served, file with the state engineer or the ~~[clerk of the]~~ district court a written or electronic
220 statement of claim, signed, and verified under oath, by the claimant, or by unsworn declaration
221 as described in Section 78B-5-705, that includes:

222 ~~[(1)]~~ (a) the name and address of the claimant;

223 ~~[(2)]~~ (b) the nature and measure of beneficial use on which the claim [of appropriation]
224 is based;

225 ~~[(3)]~~ (c) the maximum flow of water used in cubic feet per second, the maximum
226 volume of water used in acre-feet, or the quantity of water stored in acre-feet, [and the time
227 during which the flow or stored water has been used each year;] as applicable;

228 (d) the period of time during which the water is used each year;

229 (e) the period of time during which the water is stored each year, if applicable;

230 ~~[(4)]~~ (f) the name of the stream or other source from which the water is diverted, the
231 point on the stream or source where the water is diverted, and a description of the nature of the
232 diverting works;

233 ~~[(5)]~~ the date when the first work for diverting the water began, and a description of the
234 nature of the work;]

235 (g) the water right number associated with the claimed right or, if not of record in the
236 state engineer's office, evidence sufficient to enable the state engineer to evaluate the basis of
237 the claimed right, including the information listed in Subsections 73-5-13(2)(a) and (c);

238 ~~[(6)]~~ (h) the claimed priority date [when the water was first used, the flow in cubic feet
239 per second, or the quantity of water stored in acre-feet, and the time the water was used during
240 the first year];

241 ~~[(7)]~~ (i) the place and manner of current use; and

242 ~~[(8)]~~ (j) other facts that clearly define the extent, limits, and nature of the
243 [appropriation claimed] claim, or that are required by the written or electronic form provided
244 by the state engineer with the notice of [completion of survey] the time to file statements of

245 claim.

246 (2) A person claiming a right to the use of water, as described in Subsection (1):

247 (a) may request an extension of time as described in Section 73-4-10; and

248 (b) shall file the statement described in Subsection (1) on or before the granted

249 extension date, if an extension is granted pursuant to Section 73-4-10.

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

251 **73-4-9. Failure to file a statement of claim.**

252 (1) The filing of each statement [~~by a claimant~~] of claim shall be considered notice to
253 all persons of the claim of the party making the same, and [~~any person~~] failing to make and
254 deliver such statement of claim to the state engineer or the [~~clerk of the~~] district court within
255 the time prescribed by [~~law shall be forever barred and estopped from subsequently asserting~~
256 ~~any rights, and shall be held to have forfeited all rights to the use of the water theretofore~~
257 ~~claimed by him; provided, that any claimant, upon whom no other service of said notice shall~~
258 ~~have been made than by publication in a newspaper and as required in Section 45-1-101, may~~
259 ~~apply to the court for permission to file a statement of claim after the time therefor has expired,~~
260 ~~and the court may extend the time for filing such statement, not exceeding six months from the~~
261 ~~publication of said notice; but, before said time is extended, the applicant shall give notice by~~
262 ~~publication in a newspaper having general circulation and as required in Section 45-1-101 on~~
263 ~~such river system or near the water source to all other persons interested in the water of such~~
264 ~~river system or water source, and shall make it appear to the satisfaction of the court that during~~
265 ~~the pendency of the proceedings he had no actual notice thereof in time to appear and file a~~
266 ~~statement and make proof of his claim; and all parties interested may be heard as to the matter~~
267 ~~of his actual notice of the pendency of such proceedings;] Section 73-4-5, or as extended
268 pursuant to Section 73-4-10, shall be considered evidence of an intent to abandon the right.~~

269 (2) If a claimant fails to timely file a statement of claim, as provided in this chapter, for
270 a right not of record in the state engineer's office, the claimant is forever barred and estopped
271 from subsequently asserting the unclaimed right.

272 Section 6. Section 73-4-9.5 is enacted to read:

273 **73-4-9.5. List of unclaimed rights of record.**

274 (1) After the last day on which a claimant may file a statement of claim in accordance
275 with Section 73-4-5, the state engineer shall:

276 (a) file with the court a list of unclaimed rights of record listing each water right of
277 record in the state engineer's office for which a statement of claim was not timely filed, that
278 includes:

279 (i) the water right number;

280 (ii) the point of diversion; and

281 (iii) the owner of the water right as recognized in the state engineer's records;

282 (b) serve notice of the list of unclaimed rights of record on all identified potential
283 claimants that were served with a summons, in the same manner as provided in Subsection

284 73-4-11(1)(c); and

285 (c) hold a public meeting in the area covered by the division or subdivision to explain
286 the list of unclaimed rights of record.

287 (2) A claimant who desires to object to the state engineer's list of unclaimed rights of
288 record shall, within 90 days of the day on which the state engineer served the potential claimant
289 notice of the list of unclaimed rights of record, file:

290 (a) a written objection to the list of unclaimed rights of record with the district court;
291 and

292 (b) a statement of claim, as provided in this chapter, with the district court and the state
293 engineer.

294 (3) The state engineer shall evaluate and make a recommendation in the proposed
295 determination for a water right placed on the list of unclaimed rights of record if:

296 (a) the claimant files a timely objection to the list of unclaimed rights in accordance
297 with Subsection (2); and

298 (b) the court determines that a claimant's failure to file a timely statement of claim is
299 excused by:

300 (i) circumstances beyond the claimant's control;

301 (ii) mistake; or

302 (iii) any other reason justifying relief.

303 (4) If a claimant fails to file a timely statement of claim, as provided in this chapter, for
304 a right of record in the state engineer's office and the failure to file a timely claim is not
305 excused by the court as provided in Subsection (3), the claimant is forever barred and estopped
306 from asserting the right to the use of water included in the list and the right shall be considered

307 abandoned.

308 (5) After resolving all objections to the list of unclaimed rights of record, the court
309 shall render a judgment for the list of unclaimed rights of record that:

310 (a) identifies any water rights on the list of unclaimed rights that are not abandoned
311 because the court excuses the failure to file a statement of claim as provided in Subsection (3);

312 (b) adjudges the unclaimed rights abandoned; and

313 (c) may prohibit future claims from being filed for rights not of record in the state
314 engineer's office, under this chapter and Section 73-5-13, in the general adjudication area,
315 division, or subdivision.

316 Section 7. Section 73-4-10 is amended to read:

317 **73-4-10. Amendment of pleadings -- Extensions of time.**

318 (1) The court shall have power to allow amendments to any petition, statement of
319 claim, or pleading[; to extend as provided in this title the time for filing any statement of
320 claim;] and to extend, upon due cause shown, the time for filing any other pleading, statement
321 of claim, report, or [protest] objection.

322 (2) If the claimant files a written request for an extension of time to file a statement of
323 claim within the 90-day period to file a statement of claim, the state engineer shall grant one
324 30-day extension, in writing.

325 Section 8. Section 73-4-11 is amended to read:

326 **73-4-11. Proposed determination by engineer to court -- Hydrographic survey**
327 **map -- Notice -- Public meeting.**

328 ~~[(1) Within 30 days after the last day on which a claimant may file a statement of claim~~
329 ~~in accordance with Section 73-4-5, the state engineer shall begin to tabulate the facts contained~~
330 ~~in the statements filed and to investigate, whenever the state engineer shall consider necessary,~~
331 ~~the facts set forth in the statements by reference to the surveys already made or by further~~
332 ~~surveys, and shall as expeditiously as possible report to the court a recommendation of how all~~
333 ~~rights involved shall be determined.]~~

334 ~~[(2)]~~ (1) After full consideration of the statements of claims, [and of the surveys,]
335 records, and files, and after [a personal] an examination of the river system or water source
336 involved, [if the examination is considered necessary,] the state engineer shall for the general
337 adjudication area, division, or subdivision:

338 (a) ~~[formulate a report and]~~ complete a hydrographic survey map;

339 (b) prepare a proposed determination of all rights to the use of the water ~~[of the river~~
340 ~~system or water source]~~ and file it with the district court;

341 ~~[(b)]~~ (c) serve notice of completion of the ~~[report and]~~ proposed determination by
342 publication and by mail, in accordance with Subsection 73-4-3(5), to each claimant of record in
343 the state engineer's office within the general adjudication area, division, or subdivision, that
344 includes:

345 (i) (A) a copy of the ~~[report and]~~ proposed determination; or

346 (B) instructions on how to obtain or access an electronic copy of the ~~[report and]~~
347 proposed determination; and

348 (ii) a statement describing the claimant's right to file an objection to the ~~[report and]~~
349 proposed determination within 90 days after the day on which the notice of completion of the
350 ~~[report and]~~ proposed determination is served; and

351 ~~[(c)]~~ (d) hold a public meeting in the area, division, or subdivision covered by the
352 ~~[report and]~~ proposed determination to ~~[describe the report and]~~ explain the proposed
353 determination to the claimants.

354 ~~[(3)]~~ (2) A claimant who desires to object to the state engineer's ~~[report and]~~ proposed
355 determination shall, within 90 days after the day on which the state engineer served the
356 claimant with notice of completion of the ~~[report and]~~ proposed determination, file a written
357 objection to the ~~[report and]~~ proposed determination with the ~~[clerk of the]~~ district court.

358 ~~[(4)]~~ (3) The state engineer shall distribute the waters from the natural streams or other
359 natural sources:

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

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

364 Section 9. Section **73-4-12** is amended to read:

365 **73-4-12. Judgment -- In absence of contest.**

366 If no contest on the part of any claimant shall have been filed, the court shall render a
367 judgment in accordance with such proposed determination, which shall:

368 (1) determine and establish the rights ~~[of the several claimants]~~ to the use of the water

369 of said river system or water source; and ~~[among other things it shall]~~

370 (2) set forth:

371 (a) the name ~~[and post-office address]~~ of the person entitled to the use of the water;

372 (b) the quantity of water in acre-feet or the flow of water in second-feet;

373 (c) the time during which the water is to be used each year;

374 (d) the name of the stream or other source from which the water is diverted;

375 (e) the point on the stream or other source where the water is diverted;

376 (f) the priority date of the right; and ~~[such]~~

377 (g) any other matters as will fully and completely define the rights of said claimants to
378 the use of the water.

379 Section 10. Section **73-4-14** is amended to read:

380 **73-4-14. Pleadings -- Expert assistance for court.**

381 (1) The statements ~~[filed by the claimants]~~ of claim shall stand in the place of
382 pleadings, and issues may be made thereon.

383 (2) Whenever requested so to do the state engineer shall furnish the court with any
384 information which ~~[he]~~ the state engineer may possess, or copies of any of the records of ~~[his]~~
385 the state engineer's office which relate to the water of said river system or water source.

386 (3) The court may appoint referees, masters, engineers, soil specialists, or other persons
387 ~~[as necessity or emergency may require to assist in taking testimony or investigating facts, and~~
388 ~~in]~~.

389 (4) In all proceedings for the determination of the rights of claimants to the water of a
390 river system or water source, the filed statements of ~~[claimants]~~ claim shall be competent
391 evidence of the facts stated therein unless the same are put in issue.

392 Section 11. Section **73-4-15** is amended to read:

393 **73-4-15. Judgment after hearing.**

394 Upon the completion of the hearing, after objections filed, the court shall enter
395 judgment ~~[which]~~ that shall determine and establish the rights ~~[of the several claimants]~~ to the
396 use of the water of the river system or water source as provided in Section **73-4-12**.

397 Section 12. Section **73-4-16** is amended to read:

398 **73-4-16. Appeals.**

399 ~~[From all final judgments of the district court there shall be a right of appeal to the~~

400 ~~Supreme Court as in other cases.]~~

401 (1) There shall be a right of appeal from a final judgment of the district court to the
402 Supreme Court as provided in Section 78A-3-102.

403 (2) The appeal shall be upon the record made in the district court, and may as in equity
404 cases be on questions of both law and fact. [All proceedings on appeal shall be conducted
405 according to the provisions of the Code of Civil Procedure.]

406 Section 13. Section 73-4-21 is amended to read:

407 **73-4-21. Duty to update address and ownership -- Duty to follow court**
408 **proceedings -- Additional notice.**

409 (1) After the service of summons in the manner prescribed by Section 73-4-4 [hereof],
410 it shall be the duty of every person served individually or by publication to [thereafter]:

411 (a) record any change in address or water right ownership with the state engineer; and

412 (b) follow all court proceedings [and no].

413 (2) Except as provided in Subsection (3), the state engineer is not required to provide
414 any further or additional notice [shall be required] except the notice:

415 (a) that the [survey has been completed and the water users] statement of claim is due
416 as prescribed by Section 73-4-3[, and notice of the];

417 (b) of the list of unclaimed rights of record, as described in Section 73-4-9.5; and

418 (c) of the proposed determinations as provided by Section 73-4-11.

419 (3) The district court may[, however,] require notice of other proceedings to be given
420 when, in the judgment of the court, it [deems] considers notice necessary.

421 Section 14. Section 73-4-22 is amended to read:

422 **73-4-22. State engineer's duty to search records for and serve summons on**
423 **claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown**
424 **claimants.**

425 (1) The state engineer, throughout the pendency of proceedings, shall serve summons
426 in the manner prescribed by Section 73-4-4 upon all claimants to the use of water in the
427 described source embraced by said action, whenever the names and addresses of said persons
428 come to the attention of the state engineer.

429 (2) Immediately after the notice of the proposed determination is given, in accordance
430 with Section 73-4-11 hereof, the state engineer shall diligently search for the names and

431 addresses of any claimants to water in the source covered by the proposed determination who
 432 have not been previously served with summons other than by publication, and any such persons
 433 located shall forthwith be served with summons~~[, and after]~~.

434 (3) After the state engineer has exhausted [his] the search for other claimants [he shall],
 435 as described in Subsection (2), the state engineer shall:

436 (a) make such fact known to the district court by affidavit; and [the clerk of the district
 437 court shall]

438 (b) as ordered by the court, again publish summons five times, once each week, for five
 439 successive weeks which said service shall be binding upon all unknown claimants.

440 Section 15. Section **73-4-24** is amended to read:

441 **73-4-24. Petition for expedited hearing of objection -- Petition for limited**
 442 **determination.**

443 (1) A claimant to the use of water may petition the court to expedite the hearing of a
 444 valid, timely objection to a report and proposed determination prepared in accordance with
 445 Section **73-4-11** in which the claimant has a direct interest.

446 (2) A petition under Subsection (1) shall identify any party directly affected by the
 447 objection, if known to the claimant, and state why the hearing of the objection should be
 448 expedited.

449 (3) A petitioner under Subsection (1) shall notify those affected by the petition as
 450 directed by the court.

451 (4) The court may grant a petition under Subsection (1) if:

452 (a) the court finds that the expedited hearing is necessary in the interest of justice;

453 (b) granting the petition will facilitate a reasonably prompt resolution of the matters
 454 raised in the objection; and

455 (c) granting the petition does not prejudice the right of another claimant.

456 (5) During the pendency of a general adjudication suit, a claimant or group of
 457 claimants may petition the court to direct the state engineer to ~~[survey and]~~ prepare a proposed
 458 determination and hydrographic survey map for a limited area within the general adjudication
 459 area in which the claimant or group of claimants has a claim.

460 (6) The court may grant a petition under Subsection (5) if:

461 (a) the claimant or group of claimants will suffer prejudice if the petition is not

462 granted;

463 (b) the matters raised by the claimant or group of claimants are proper for
464 determination in a general adjudication;

465 (c) granting the petition will not unduly burden the state engineer's resources; and

466 (d) granting the petition will not unduly interfere with the state engineer's discretion to
467 allocate resources for the preparation of another proposed determination.

468 (7) If the court grants a petition under this section, the state engineer shall comply with
469 this chapter in satisfying the court's order.

470 Section 16. **Repealer.**

471 This bill repeals:

472 Section **73-4-6, In case of use for irrigation.**

473 Section **73-4-7, In case of use for power purposes.**

474 Section **73-4-8, In case of use for mining or milling.**

Legislative Review Note
Office of Legislative Research and General Counsel