

Scott H. Chew proposes the following substitute bill:

1 **Diligence Claims Water Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott H. Chew**

Senate Sponsor:

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2 **LONG TITLE**

3 **General Description:**

4 This bill addresses use of water related to diligence claims.

5 **Highlighted Provisions:**

6 This bill:

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- 8 ▶ clarifies provisions related to submitting a claim;
- 9 ▶ defines terms;
- 10 ▶ provides for the creation of a rebuttable presumption of the right to use certain water
- 11 related to a homestead parcel;
- 12 ▶ establishes the process for rebutting the presumption; and
- 13 ▶ makes technical and conforming amendments.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 **AMENDS:**

20 **73-5-13**, as last amended by Laws of Utah 2020, Chapter 59

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

23 Section 1. Section **73-5-13** is amended to read:

24 **73-5-13 . Claim to surface or underground water not otherwise represented --**

25 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**  
**action to determine validity -- Rules -- Homestead parcels.**

27 (1)(a) A claimant to the right to the use of water, including both surface and

28 underground water, whose right is not represented by a certificate of appropriation

29 issued by the state engineer, by an application filed with the state engineer, by a court  
30 decree, or by a notice of claim filed [pursuant] according to law, shall submit the  
31 claim to the state engineer in accordance with this section.

32 (b) Subsections (2) through (7) only apply to [elaims or corrected claims] a claim or  
33 corrected claim submitted to the state engineer in accordance with this section on or  
34 after May 14, 2013.

35 (c) Subsection (8) applies to a claim or corrected claim submitted to the state engineer in  
36 accordance with this section on or after May 6, 2026.

37 (2)(a) The claimant or the claimant's appointed representative shall verify under oath a  
38 claim submitted under this section and submit the claim on [forms] a form provided  
39 by the state engineer setting forth [any] the information the state engineer requires,  
40 including:

- 41 (i) the name and mailing address of the person making the claim;
- 42 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, [  
43 where] when appropriate;
- 44 (iii) the source of supply;
- 45 (iv) the claimed priority date of the right;
- 46 (v) the location of the point of diversion with reference to a United States land survey  
47 corner;
- 48 (vi) the place of use;
- 49 (vii) the nature and extent of use;
- 50 (viii) the time during which the water has been used each year; and
- 51 (ix) the date when the water was first used.

52 (b) [The] A claim described in Subsection (1) shall also include the following  
53 information, prepared by a Utah licensed engineer or a Utah licensed land surveyor:  
54 (i) measurements of the amount of water diverted;  
55 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per  
56 second is consistent with the beneficial use claimed and the supply that the source  
57 is capable of producing; and  
58 (iii) a map showing the original diversion and conveyance works and where the water  
59 was placed to beneficial use, including irrigated lands, if irrigation is [the] a  
60 claimed beneficial use.

61 (c) The state engineer may require additional information as necessary to evaluate [any] a  
62 claim described in Subsection (1) including:

63 (i) [affidavits] an affidavit setting forth facts of which the affiant has personal  
64 knowledge;  
65 (ii) an authenticated or historic [photographs, plat or survey maps, or surveyors' notes]  
66 photograph, plat or survey map, or surveyor's note;  
67 (iii) an authenticated [copies of original diaries, personal histories, or other historical  
68 documents that document] copy of an original diary, personal history, or other  
69 historical document that documents the claimed use of water;[ and]  
70 (iv) evidence of a homestead parcel as defined in Subsection (8); or  
71 [ (v) [other relevant records] another relevant record on file with a county  
72 recorder's, surveyor's, or assessor's office.

73 (3)(a) A claimant, or a claimant's successor in interest, as shown in the records of the  
74 state engineer, may file a corrected claim that:

75 (i) is designated as a corrected claim;  
76 (ii) includes the information described in Subsection (2); and  
77 (iii) bears the same number as the original claim.  
78 (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is  
79 filed before the state engineer publishes the original claim in accordance with  
80 Subsection (4)(a)(iv), the state engineer may not charge an additional fee for filing  
81 the corrected claim.  
82 (c) The state engineer shall treat a corrected claim that is filed in accordance with  
83 Subsection (3)(a) as if the corrected claim were the original claim.

84 (4)(a) When a claimant submits a claim that is acceptably complete under Subsection (2)  
85 and deposits money with the state engineer sufficient to pay the expenses of  
86 conducting a field investigation and publishing a notice of the claim, the state  
87 engineer shall:

88 (i) file the claim;  
89 (ii) endorse the date of the claim's receipt;  
90 (iii) assign the claim a water right number;  
91 (iv) publish a notice of the claim following the same procedures as provided in  
92 Section 73-3-6; and  
93 (v) if the claimant is the federal government or a federal agency, provide a copy of  
94 the claim to the members of the Natural Resources, Agriculture, and Environment  
95 Interim Committee.  
96 (b) [A claim not acceptably complete under Subsection (2) shall be returned to the

97 claimant.] The state engineer shall return a claim to the claimant that the state  
98 engineer determines is not acceptably complete.

99 (c) [The acceptance of a claim filed under this section by the state engineer may not be  
100 considered to be] The state engineer's acceptance of a claim filed under this section is  
101 not considered an adjudication by the state engineer of the validity of the claimed  
102 water right.

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

104 (i) conduct a field investigation of [each] a claim filed under this section; and  
105 (ii) prepare a report of the investigation.

106 (b) In preparing the report of the investigation described in Subsection (5)(a), the state  
107 engineer shall:

108 (i) apply Section 73-1-3; and  
109 (ii) include an evaluation of the asserted beneficial uses as the asserted beneficial  
110 uses existed at the time of the claimed priority date, specifically identifying any  
111 portion of the claim that was not placed to beneficial use in accordance with law.

112 (c) The report of the investigation shall:

113 (i) become part of the file on the claim; and  
114 (ii) be admissible in [any] an administrative or judicial proceeding regarding the  
115 validity of the claim.

116 (6)(a) A person who may be damaged by a diversion and use of water as described in a  
117 claim submitted [pursuant] according to this section may file an action in [district  
118 court] a court with jurisdiction to determine the validity of the claim, regardless of  
119 whether the state engineer has filed the claim in accordance with Subsection (4)(a).

120 (b) Venue for an action brought under Subsection (6)(a) [shall be] is in the county where  
121 the point of diversion listed in the claim is located, or in a county where the place of  
122 use, or some part of [it] the place of use, is located.

123 (c) [The] A person bringing an action under this Subsection (6) shall [be brought] bring  
124 the action against the claimant to the use of water or the claimant's successor in  
125 interest.

126 (d) In an action brought to determine the validity of a claim to the use of water under  
127 this section, the claimant has the initial burden of proof as to the validity of the  
128 claimed right.

129 (e)(i) A person filing an action challenging the validity of a claim to the use of water  
130 under this section shall notify the state engineer of the pendency of the action in

131 accordance with state engineer rules.

132 (ii) Upon receipt of the notice, the state engineer may take no action on a change or  
133 exchange application founded on the claim that is the subject of the pending  
134 litigation until the court adjudicates the matter.

135 (f) Upon the entering of a final order or decree in a judicial action to determine the  
136 validity of a claim under this section, the prevailing party shall file a certified copy of  
137 the order or decree with the state engineer, who shall incorporate the order into the  
138 state engineer's file on the claim.

139 (7)(a) In a general adjudication of water rights under Title 73, Chapter 4, Determination  
140 of Water Rights, after completion of final summons in accordance with Section  
141 73-4-22, a claimant is prohibited from filing a claim under this section in the general  
142 adjudication area, division, or subdivision.

143 (b) The state engineer shall return a claim filed under this section to a claimant without  
144 further action if:

145 (i) the state engineer receives a claim for an area where the claimant is prohibited  
146 from filing the claim under Subsection (7)(a) or Section 73-4-9.5; or  
147 (ii) the claim is untimely as provided in Section 73-4-9.

148 (8)(a) As used in this Subsection (8):

149 (i) "Homestead parcel" means the land area of 640 acres or less conveyed by patent  
150 from the federal government.

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

152 (iii) "Livestock watering pond" means a pond that:

153 (A) is formed by precipitation and not the diversion of a water source;  
154 (B) has an annual use that meets the condition of Subsection (8)(b)(i); and  
155 (C) is used to directly water livestock or for associated uses related to the raising  
156 and care of livestock.

157 (iv) "Water right" means the same as that term is defined in Section 73-3c-102.

158 (b) There is a rebuttable presumption that a claimant has the right to the use of a  
159 livestock watering pond even though the right is not represented by a certificate of  
160 appropriation issued by the state engineer, by an application filed with the state  
161 engineer, by a court decree, or by a notice of claim filed according to law if:

162 (i) the aggregate of annual use of all livestock watering ponds that support the  
163 homestead parcel is less than 20 acre-feet of water;  
164 (ii) the claimant files an acceptably complete claim in accordance with this section;

- (iii) the claimant deposits money with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim;
- (iv) the livestock watering pond is in support of a homestead parcel; and
- (v) the livestock watering pond:

- (A) existed before the conveyance of the patent for the homestead parcel; and
- (B) was used as surface water before 1903.

(c) The priority date of a claim described in Subsection (8)(b) is the date on which the homestead parcel is first used in support of livestock notwithstanding that the date is before the patent conveying title to the homestead parcel.

(d) The rebuttable presumption described in Subsection (8)(b) may be rebutted by a person protesting a claim based on the impairment of a water right held by the person protesting the claim. A person may rebut the rebuttable presumption described in Subsection (8)(b) by a preponderance of the evidence.

(e) If a claimant and a protestant come to a written agreement regarding how the issue of impairment may be mitigated:

- (i) the state engineer may incorporate the agreement as part of the file on the claim;  
and
- (ii) the agreement is admissible in an administrative or judicial proceeding regarding  
the validity of the claim.

## Section 2. Effective Date.

This bill takes effect on May 6, 2026.