Scott H. Chew proposes the following substitute bill:

Diligence Claims Water Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott H. Chew

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill addresses use of water related to diligence claims.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

73-5-13 . Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules -- Homestead parcels.

(1)(a) A claimant to the right to the use of water, including both surface and underground water, whose right is not represented by a certificate of appropriation

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

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

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

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

(i) the name and mailing address of the person making the claim;

(ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, [~~where~~] when appropriate;

(iii) the source of supply;

(iv) the claimed priority date of the right;

(v) the location of the point of diversion with reference to a United States land survey corner;

(vi) the place of use;

(vii) the nature and extent of use;

(viii) the time during which the water has been used each year; and

(ix) the date when the water was first used.

(b) [~~The~~] A claim described in Subsection (1) shall also include the following information, prepared by a Utah licensed engineer or a Utah licensed land surveyor:

(i) measurements of the amount of water diverted;

(ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply that the source is capable of producing; and

(iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is [~~the~~] a claimed beneficial use.

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

(i) [~~affidavits~~] an affidavit setting forth facts of which the affiant has personal knowledge;

(ii) an authenticated or historic [~~photographs, plat or survey maps, or surveyors' notes~~] photograph, plat or survey map, or surveyor's note;

(iii) an authenticated [~~copies of original diaries, personal histories, or other historical documents that document~~] copy of an original diary, personal history, or other historical document that documents the claimed use of water;[~~and~~]

(iv) evidence of a homestead parcel as defined in Subsection (8); or

[~~(iv)~~] (v) [~~other relevant records~~] another relevant record on file with a county recorder's, surveyor's, or assessor's office.

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

(i) is designated as a corrected claim;

(ii) includes the information described in Subsection (2); and

(iii) bears the same number as the original claim.

(b) If a corrected claim that meets the requirements described in Subsection (3)(a) is filed before the state engineer publishes the original claim in accordance with Subsection (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.

(c) The state engineer shall treat a corrected claim that is filed in accordance with Subsection (3)(a) as if the corrected claim were the original claim.

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

(i) file the claim;

(ii) endorse the date of the claim's receipt;

(iii) assign the claim a water right number;

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

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

(b) [~~A claim not acceptably complete under Subsection (2) shall be returned to the~~

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

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

(5)(a) The state engineer shall:

(i) conduct a field investigation of [~~each~~] a claim filed under this section; and

(ii) prepare a report of the investigation.

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

(i) apply Section 73-1-3; and

(ii) include an evaluation of the asserted beneficial uses as the asserted beneficial uses existed at the time of the claimed priority date, specifically identifying any portion of the claim that was not placed to beneficial use in accordance with law.

(c) The report of the investigation shall:

(i) become part of the file on the claim; and

(ii) be admissible in [~~any~~] an administrative or judicial proceeding regarding the validity of the claim.

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

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

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

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

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

accordance with state engineer rules.

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

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

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

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

(i) the state engineer receives a claim for an area where the claimant is prohibited from filing the claim under Subsection (7)(a) or Section 73-4-9.5; or

(ii) the claim is untimely as provided in Section 73-4-9.

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

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

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

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

(A) is formed by precipitation and not the diversion of a water source;

(B) has an annual use that meets the condition of Subsection (8)(b)(i); and

(C) is used to directly water livestock or for associated uses related to the raising and care of livestock.

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

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

(i) the aggregate of annual use of all livestock watering ponds that support the homestead parcel is less than 20 acre-feet of water;

(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.