

**ELECTRONIC GOVERNMENT SERVICES
AMENDMENTS - NATURAL RESOURCES**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Richard M. Siddoway

This act modifies the Water and Irrigation Code. The act amends statutory language to facilitate the electronic delivery of government services by the state engineer.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

73-1-4, as last amended by Chapter 98, Laws of Utah 1996

73-3-2, as last amended by Chapter 137, Laws of Utah 1991

73-3-3, as last amended by Chapter 208, Laws of Utah 1992

73-3-5, as last amended by Chapter 137, Laws of Utah 1959

73-3-12, as last amended by Chapter 18, Laws of Utah 1997

73-3-27, Utah Code Annotated 1953

73-3-28, Utah Code Annotated 1953

73-5-13, as last amended by Chapter 198, Laws of Utah 1997

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

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

73-1-4. Reversion to public by abandonment or forfeiture for nonuse within five years -- Extension of time.

(1) (a) When an appropriator or the appropriator's successor in interest abandons or ceases to use water for a period of five years, the water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified application for an extension of time with the state engineer.

(b) (i) A water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance

with the provisions of Chapter 4, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4 shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree.

(c) The extension of time to resume the use of that water may not exceed five years unless the time is further extended by the state engineer.

(d) The provisions of this section are applicable whether the unused or abandoned water is permitted to run to waste or is used by others without right.

(2) (a) The state engineer shall furnish an application [~~blank~~] form that includes a space for:

(i) the name and address of the applicant;

(ii) the name of the source from which the right is claimed and the point on that source where the water was last diverted;

(iii) evidence of the validity of the right claimed by reference to application number in the state engineer's office;

(iv) date of court decree and title of case, or the date when the water was first used;

(v) the place, time, and nature of past use;

(vi) the flow of water that has been used in second-feet or the quantity stored in acre-feet;

(vii) the time the water was used each year;

(viii) the extension of time applied for;

(ix) a statement of the reason for the nonuse of the water; and

(x) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the application for an extension of time.

(c) (i) Upon receipt of the application, the state engineer shall publish, once a week for two successive weeks, a notice of the application in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice may be published in more than one newspaper.

(iii) The notice shall inform the public of the nature of the right for which the extension is

sought and the reasons for the extension.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(f) After further investigation, the state engineer may approve or reject the application.

(3) (a) Applications for extension shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

(i) financial crisis;

(ii) industrial depression;

(iii) operation of legal proceedings or other unavoidable cause; and

(iv) the holding of a water right without use by any municipality, metropolitan water district, or other public agency to meet the reasonable future requirements of the public.

(4) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file in a manner prescribed by the state engineer a [~~verified~~] signed statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(5) The appropriator's water right ceases and the water reverts to the public if the:

(a) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(b) state engineer denies the application for extension of time; or

(c) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

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

73-3-2. Application for right to use unappropriated public water -- Necessity -- Form -- Contents -- Validation of prior applications by state or United States or officer or agency thereof.

(1) (a) In order to acquire the right to use any unappropriated public water in this state, any person who is a citizen of the United States, or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, business and economic development, wildlife resources, and state lands and forestry, or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in ~~[writing to the]~~ a form prescribed by the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.

(b) The application shall be upon a ~~[blank]~~ form to be furnished by the state engineer and shall set forth:

(i) the name and post office address of the person, corporation, or association making the application;

(ii) the nature of the proposed use for which the appropriation is intended;

(iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;

(iv) the time during which it is to be used each year;

(v) the name of the stream or other source from which the water is to be diverted;

(vi) the place on the stream or source where the water is to be diverted and the nature of the

diverting works;

- (vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and
- (viii) other facts that clearly define the full purpose of the proposed appropriation.

(2) (a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:

(i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and

(ii) the character of the soil.

(b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:

(i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;

(ii) the amount of power to be produced;

(iii) the purposes for which and the places where it is to be used; and

(iv) the point where the water is to be returned to the natural stream or source.

(c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:

(i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;

(ii) its nature; and

(iii) the place where the water is to be returned to the natural stream or source.

(d) (i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.

(ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.

(iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the

point of diversion in those cases is the point where the longitudinal axis of the dam crosses the center of the stream bed.

(iv) The point where released storage water is taken from the stream shall be designated as the point of rediversion.

(v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.

(vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.

(e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer.

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

73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.

(1) For purposes of this section:

(a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

(b) "Temporary changes" means changes for fixed periods not exceeding one year.

(2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) A change may not be made if it impairs any vested right without just compensation.

(3) Both permanent and temporary changes of point of diversion, place of use, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the

manner provided in this section.

(4) (a) A change may not be made unless the change application is approved by the state engineer.

(b) Applications shall be made upon forms furnished by the state engineer and shall set forth:

(i) the name of the applicant;

(ii) a description of the water right;

(iii) the quantity of water;

(iv) the stream or source;

(v) the point on the stream or source where the water is diverted;

(vi) the point to which it is proposed to change the diversion of the water;

(vii) the place, purpose, and extent of the present use;

(viii) the place, purpose, and extent of the proposed use; and

(ix) any other information that the state engineer requires.

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

(b) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application.

(6) (a) The state engineer shall investigate all temporary change applications.

(b) If the state engineer finds that the temporary change will not impair any vested rights of others, he shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought might impair vested rights, before authorizing the change, he shall give notice of the application to any person whose rights may be affected by the change.

(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

(7) (a) The state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.

(b) If otherwise proper, permanent or temporary changes may be approved for part of the water involved or upon the condition that conflicting rights are acquired.

(8) (a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place of use, or purpose of use.

(b) A change of an approved application does not:

(i) affect the priority of the original application; or

(ii) extend the time period within which the construction of work is to begin or be completed.

(9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

(a) obtains no right; and

(b) is guilty of a class B misdemeanor, each day of the unlawful change constituting a separate offense, separately punishable.

(10) (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.

(b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

(11) (a) In accordance with the requirements of this section, the Division of Wildlife Resources or Division of Parks and Recreation may file applications for permanent or temporary changes for the purpose of providing water for instream flows, within a designated section of a natural stream channel or altered natural stream channel, necessary within the state of Utah for:

(i) the propagation of fish;

(ii) public recreation; or

(iii) the reasonable preservation or enhancement of the natural stream environment.

(b) Applications may be filed for changes on:

- (i) perfected water rights presently owned by the respective division;
 - (ii) perfected water rights purchased by the respective division for the purpose of providing water for instream flows, through funding provided for that purpose by legislative appropriation or acquired by lease, agreement, gift, exchange, or contribution; or
 - (iii) appurtenant water rights acquired with the acquisition of real property by either division.
- (c) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.
- (d) Subsection (11) does not allow enlargement of the water right sought to be changed nor may the change impair any vested water right.
- (e) In addition to the other requirements of this section, an application filed by either division shall:
- (i) set forth the legal description of the points on the stream between which the necessary instream flows will be provided by the change; and
 - (ii) include appropriate studies, reports, or other information required by the state engineer that demonstrate the necessity for the instream flows in the specified section of the stream and the projected benefits to the public that will result from the change.
- (f) The Division of Wildlife Resources and Division of Parks and Recreation may:
- (i) purchase water rights for the purposes provided in Subsection (11)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or
 - (ii) accept a donated water right without legislative approval.
- (g) Subsection (11) does not authorize either division to:
- (i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing instream flows; or
 - (ii) acquire water rights by eminent domain for instream flows or for any other purpose.
- (h) Subsection (11) applies only to change applications filed on or after April 28, 1986.
- (12) (a) Sixty days before the date on which proof of change for instream flows under Subsection (11) is due, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when proof of change

is due.

(b) Before the date when proof of change is due, the applicant must either:

(i) file a verified statement with the state engineer that the instream flow uses have been perfected, which shall set forth:

(A) the legal description of the points on the natural stream channel or altered natural stream channel between which the necessary instream flows have been provided;

(B) detailed measurements of the flow of water in second feet changed;

(C) the period of use; and

(D) any additional information required by the state engineer; or

(ii) apply for a further extension of time as provided for in Section 73-3-12.

(c) Upon approval of the verified statement required under Subsection (12)(b)(i), the state engineer shall issue a certificate of change for instream flow use.

Section 4. Section **73-3-5** is amended to read:

73-3-5. Action by engineer on applications.

(1) On receipt of each application containing the information required by Section 73-3-2, and payment of the filing fee, it shall be the duty of the state engineer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt [~~in a book kept in his office~~] for that purpose.

(2) It shall be [~~his~~] the duty of the state engineer to examine the application and determine whether any corrections, amendments or changes are required for clarity and if so, see that such changes are made before further processing.

(3) All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded [~~in a suitable book kept for that purpose~~].

(4) The state engineer may issue a temporary receipt to drill a well at any time after the filing of an application to appropriate water therefrom, as provided by this section if all fees be advanced and if in his judgment there is unappropriated water available in the proposed source and there is no likelihood of impairment of existing rights; provided, however, that the issuance of such temporary permits shall not dispense with the publishing of notice and the final approval or rejection of such

application by the state engineer, as provided by this chapter.

(5) The state engineer may send the necessary notices and address all correspondence relating to each application to the owner thereof as shown by the state engineer's records, or to his attorney in fact provided a written power of attorney is filed in the state engineer's office.

Section 5. Section **73-3-12** is amended to read:

**73-3-12. Time limit on construction and application to beneficial use -- Extensions --
Procedures and criteria.**

(1) As used in this section, "public agency" means a public water supply agency of:

- (a) the state; or
- (b) a political subdivision of the state.

(2) (a) The construction of the works and the application of water to beneficial use shall be diligently prosecuted to completion within the time fixed by the state engineer.

(b) Extensions of time, not exceeding 50 years from the date of approval of the application, except as provided in Subsection (2)(c), may be granted by the state engineer on proper showing of diligence or reasonable cause for delay.

(c) Additional extensions of time, beyond 50 years, may be granted by the state engineer on applications held by any public agency, if the public agency can demonstrate the water will be needed to meet the reasonable future requirements of the public.

(d) All requests for extension of time shall be made by [affidavit] signed statement and shall be filed in the office of the state engineer on or before the date fixed for filing proof of appropriation.

(e) Extensions not exceeding 14 years after the date of approval may be granted by the state engineer upon a sufficient showing by [affidavit] signed statement, but extensions beyond 14 years shall be granted only after application and publication of notice.

(f) (i) (A) The state engineer shall publish notice once each week for two successive weeks in a newspaper of general circulation in the county in which the source of supply is located and where the water is to be used.

(B) The notice may be published in more than one newspaper.

(ii) The notice shall inform the public of the diligence claimed and the reason for the request.

(g) Any person who owns a water right from the source of supply referred to in Subsection (2)(f) or holds an application from that source of supply may file a protest with the state engineer:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal;
and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(h) In considering an application to extend the time in which to place water to beneficial use under an approved application, the state engineer shall deny the extension and declare the application lapsed, unless the applicant affirmatively shows that the applicant has exercised or is exercising reasonable and due diligence in working toward completion of the appropriation.

(i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall approve the extension.

(ii) The approved extension is effective so long as the applicant continues to exercise reasonable diligence in completing the appropriation.

(j) The state engineer shall consider the holding of an approved application by any public agency to meet the reasonable future requirements of the public to be reasonable and due diligence within the meaning of this section for the first 50 years. The state engineer may approve extensions beyond 50 years for a public agency, if the agency provides information sufficient to demonstrate the water will be needed to meet the reasonable future requirements of the public.

(k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the works to completion, the state engineer may deny the extension or may grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.

(3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which proof has not been submitted shall lapse and have no further force or effect after the expiration of 50 years from the date of its approval.

(b) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year period in which to make proof.

(c) An application held by a public agency to meet the reasonable future requirements of the

public, for which proof of appropriation has not been submitted, shall lapse, unless extended as provided in Subsection (2)(j).

Section 6. Section **73-3-27** is amended to read:

73-3-27. Requests for segregation of pending applications.

Upon request in writing and approval by the state engineer, applications to appropriate or to permanently change the point of diversion, place or purpose of use of water may be divided or segregated into two or more separate parts; provided such request shall be made upon [~~blanks to be~~] forms furnished by the state engineer and shall include the serial number of the application to be segregated, the name, post-office address of the owner of the application, a statement of the nature of the proposed division or segregation, the reasons therefor, and such other information as the state engineer may require.

Action taken by the state engineer on applications for appropriation or permanent change prior to segregation shall be applicable in all respects to the segregated parts thereof. Upon segregation the original and each segregated part shall be treated as separate applications. The approval of a request for segregation shall not confirm the validity or good standing of the segregated application or extend the time for the construction of works. Action of the state engineer upon requests for segregation taken prior to the effective date of this act is approved and confirmed.

Requests for segregation shall be rejected if the approval thereof would impair rights or would prove detrimental to the public welfare.

Section 7. Section **73-3-28** is amended to read:

73-3-28. Replacement wells -- Requirements -- State engineer's approval -- Application to drill -- Filing -- Form -- Contents -- Notice -- Fees -- Definition -- Plugging of old well.

An existing well may be replaced with a replacement well within a radius of 150 feet from the existing well without the filing of a change application under Section 73-3-3, upon approval first having been obtained from the state engineer.

Such request for permission to drill a replacement well shall be filed with the state engineer upon a [~~blank~~] form to be furnished by the state engineer. Such [~~blank~~] form shall contain, but need not be limited to, the name and post office address of the person, corporation or association making

the request. The number of the claim or application filed with the state engineer covering the well which is being replaced, the number of the award if in a decree, the reason for the replacement, the location of the replacement well with reference to the nearest United States land survey corner, and from the old well, and the name of the driller employed by the applicant to do the work.

No filing fee shall be required for the filing of such a request for permission to drill a replacement well and the state engineer need give only such notice as, in his judgment, is necessary to protect existing rights and in the event the state engineer shall determine that it is necessary to publish notice the advertising fee shall be paid in advance by the applicant.

The term "replacement well" as used herein means a new well drilled for the sole purpose of replacing an existing well which is impaired or made useless by structural difficulties and no new right in the use of water accrues. Upon completion of the new well the old well must be plugged by the applicant in a manner satisfactory to the state engineer.

Section 8. 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.

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

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

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

- (i) the name and post office 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 appropriate;

- (iii) the source of supply;
- (iv) the 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 claim shall also include the following information verified under oath by a registered engineer or 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 which 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 claimed beneficial use.

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

- (i) affidavits setting forth facts of which the affiant has personal knowledge;
- (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
- (iii) authenticated copies of original diaries, personal histories, or other historical documents which document the claimed use of water; and
- (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.

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

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

(4) (a) Upon submission by a claimant of a claim that is acceptably complete under Subsection (2) and the deposit of money by a claimant 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 its receipt;
- (iii) assign the claim a water right number; and
- (iv) publish a notice of the claim following the same procedures as provided in Section

73-3-6.

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

(c) The acceptance of any claim filed under this section by the state engineer may not be considered to be 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 claim filed; and
- (ii) prepare a report of the investigation.

(b) The report of the investigation shall:

- (i) become part of the file on the claim; and
- (ii) be admissible in any administrative or judicial proceeding on the validity of the claim.

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

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

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

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

(e) Any person filing an action challenging the validity of a claim to the use of water under this section shall notify the state engineer [~~in writing~~] of the pendency of the action in a manner prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no action

on any change or exchange applications founded on the claim that is the subject of the pending litigation, until the court adjudicates the matter.

(f) Upon the entering of any final order or decree in any 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, which shall become part of the state engineer's file on the claim.

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