

**JUDICIAL REVIEW OF STATE ENGINEER'S
DECISION**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: Kevin T. VanTassell

LONG TITLE

General Description:

This bill amends provisions relating to the judicial review of a state engineer decision.

Highlighted Provisions:

This bill:

▸ requires a person seeking judicial review to:

• name the state engineer, and in some cases the person who is the subject of the proceeding, as a respondent; and

• give notice to a person who protested during the adjudicative proceeding; and

▸ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-14, as last amended by Laws of Utah 1987, Chapter 161

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

Section 1. Section **73-3-14** is amended to read:

73-3-14. Judicial review of state engineer order.

(1) (a) [~~Any~~] A person aggrieved by an order of the state engineer may obtain judicial

30 review ~~[by following the procedures and requirements of]~~ in accordance with Title 63, Chapter
31 46b, Administrative Procedures Act, and this section.

32 (b) Venue for judicial review of an informal adjudicative ~~[proceedings shall be]~~
33 proceeding is in the county in which the ~~[stream or]~~ water source~~[, or some part of it,]~~ or a
34 portion of the water source is located.

35 (2) The state engineer shall be joined as a ~~[defendant]~~ respondent in ~~[all suits]~~ a petition
36 to review ~~[his decisions]~~ the state engineer's decision, but no judgment for costs or expenses of
37 the litigation may be rendered against ~~[him]~~ the state engineer.

38 (3) A person who files a petition for judicial review as authorized in this section shall:

39 (a) name the state engineer as a respondent; and

40 (b) provide written notice in accordance with Subsection (5) to each person who filed a
41 protest in accordance with Section 73-3-7 of:

42 (i) the filing of the petition for judicial review; and

43 (ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure, Rule
44 24.

45 (4) In addition to the requirements of Subsection (3), a protestant in the adjudicative
46 proceeding who files a petition for judicial review shall also name as a respondent the person:

47 (a) who requested the adjudicative proceeding; or

48 (b) against whom the state engineer brought the adjudicative proceeding.

49 (5) The written notice required by this section shall:

50 (a) be mailed:

51 (i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and

52 (ii) to the address on record with the state engineer's office at the time the order is
53 issued; and

54 (b) include:

55 (i) a copy of the petition; and

56 (ii) the address of the court in which the petition is pending.

57 (6) If a person who files a petition for judicial review fails to provide notice as required

58 by this section, the court shall dismiss the petition without prejudice upon:

59 (a) the motion of a party;

60 (b) the special appearance of a person who:

61 (i) participated in the adjudicative proceeding; and

62 (ii) is not a party; or

63 (c) the court's own motion.

64 (7) A person who files a petition for judicial review is not required to:

65 (a) notwithstanding Subsection 63-46b-14(3)(b), name a respondent that is not required

66 by this section; and

67 (b) notwithstanding Subsection 63-46b-15(2)(a)(iv), identify all parties to the

68 adjudicative proceeding.