

1 **WATER RIGHTS ADDENDUMS TO DEEDS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ben C. Ferry**

5 Senate Sponsor: Dennis E. Stowell

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies and enacts provisions relating to water rights addenda to deeds.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows a person submitting for recording a deed conveying title to land or title to
- 13 water rights to submit also a water rights addendum identifying and describing the
- 14 water rights being conveyed;
- 15 ▶ requires grantors and grantees to sign any water rights addendum that is submitted;
- 16 ▶ requires the state engineer to use the approved water rights addendum form and to
- 17 make the form available to the public;
- 18 ▶ requires county recorders to transmit a copy of a recorded applicable deed and
- 19 water rights addendum to the state engineer; and
- 20 ▶ makes conforming changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 **AMENDS:**

27 **73-1-10**, as last amended by Laws of Utah 2003, Chapter 298

28 **73-1-11**, as last amended by Laws of Utah 1998, Chapter 135

29 **ENACTS:**

30 **57-3-109**, Utah Code Annotated 1953

31

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

33 Section 1. Section **57-3-109** is enacted to read:

34 **57-3-109. Water rights addenda.**

35 (1) As used in this section:

36 (a) "Applicable deed" means a deed executed on or after July 1, 2011:

37 (i) conveying fee simple title to land; or

38 (ii) conveying title to water rights without conveying title to land.

39 (b) "Water rights addendum" means a written document that:

40 (i) is an addendum to an applicable deed;

41 (ii) is in a form approved by the Legislature in a joint resolution; and

42 (iii) (A) identifies and describes the water rights transferred under an applicable deed;

43 or

44 (B) states that no water rights are transferred under an applicable deed.

45 (2) Beginning July 1, 2011, a person submitting an applicable deed to a county
46 recorder's office for recording may also submit a water rights addendum as an addendum to
47 the applicable deed.

48 (3) (a) A grantor shall complete and sign a water rights addendum submitted under
49 Subsection (2).

50 (b) (i) A grantee shall sign a water rights addendum to acknowledge receipt of a copy
51 of the water rights addendum.

52 (ii) A grantee's signature on a water rights addendum may be by facsimile or electronic
53 means.

54 (4) The state engineer shall use and make available to the public the water rights
55 addendum form approved by the Legislature.

56 (5) Upon recording an applicable deed with a water rights addendum, a county
57 recorder shall transmit a paper or electronic copy of the deed and water rights addendum to the

58 state engineer.

59 Section 2. Section **73-1-10** is amended to read:

60 **73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and**
61 **recording of deed -- Report of water right conveyance.**

62 (1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a
63 diligence claim to the use of surface or underground water, or a water user's claim filed in
64 general determination proceedings, shall be transferred by deed in substantially the same
65 manner as is real estate.

66 (b) The deed must be recorded in the office of the recorder of the county where the
67 point of diversion of the water is located and in the county where the water is used.

68 (c) A recorded deed of a water right shall from the time of its recording in the office of
69 the county recorder constitute notice of its contents to all persons.

70 (d) Beginning July 1, 2011, a deed under Subsection (1)(a) may include a water rights
71 addendum as provided in Section 57-3-109.

72 (2) The right to the use of water evidenced by shares of stock in a corporation shall be
73 transferred in accordance with the procedures applicable to securities set forth in Title 70A,
74 Chapter 8, Uniform Commercial Code - Investment Securities.

75 (3) (a) To update water right ownership on the records of the state engineer, a water
76 right owner shall submit a report of water right conveyance to the state engineer.

77 (b) The report of water right conveyance shall be on forms provided by the state
78 engineer.

79 (c) The report shall be prepared by:

80 (i) or prepared under the direction of and certified by, any of the following persons
81 licensed in Utah:

82 (A) an attorney;

83 (B) a professional engineer;

84 (C) a title insurance producer; or

85 (D) a professional land surveyor; or

86 (ii) the water right owner as authorized by rule of the state engineer.

87 (d) The filing and processing of a report of water right conveyance with the state
88 engineer is neither an adjudication of water right ownership nor an opinion as to title or
89 validity of the water right.

90 (e) The state engineer shall adopt rules that specify:

91 (i) the information required in a report of water right conveyance; and

92 (ii) the procedures for processing the reports.

93 Section 3. Section **73-1-11** is amended to read:

94 **73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions --**

95 **Conveyance of a portion of irrigated land -- Appurtenant water rights -- Evidence --**

96 **Where appurtenant -- Partial conveyances of water and land.**

97 (1) A water right appurtenant to land shall pass to the grantee of the land unless the
98 grantor:

99 (a) specifically reserves the water right or any part of the water right in the land
100 conveyance document;

101 (b) conveys a part of the water right in the land conveyance document; or

102 (c) conveys the water right in a separate conveyance document prior to or
103 contemporaneously with the execution of the land conveyance document.

104 (2) (a) If the water right has been exercised in irrigating different parcels of land at
105 different times, it shall pass to the grantee of a parcel of land on which the water right was
106 exercised next preceding the time the land conveyance was executed.

107 (b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.

108 (3) In any conveyance, the grantee assumes the obligation for any unpaid assessment.

109 (4) The right to the use of water evidenced by shares of stock in a corporation shall not
110 be deemed appurtenant to land.

111 (5) (a) This Subsection (5) governs land conveyances executed on or after May 4,
112 1998, and has no retrospective operation.

113 (b) For purposes of land conveyances only, a water right evidenced by any of the

114 following documents is appurtenant to land:

115 (i) a decree entered by a court;

116 (ii) a certificate issued under Section 73-3-17;

117 (iii) a diligence claim for surface or underground water filed pursuant to Section
118 73-5-13;

119 (iv) a water user's claim executed for general determination of water rights
120 proceedings conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or
121 pursuant to Section 73-3-16;

122 (v) an approval for an application to appropriate water issued under Section 73-3-10;

123 (vi) an approval for an application to permanently change the place of use of water
124 issued under Section 73-3-10; or

125 (vii) an approval for an application to exchange water issued under Section 73-3-20.

126 (c) For purposes of land conveyances only, the land to which a water right is
127 appurtenant is the authorized place of use of water as described in the:

128 (i) decree;

129 (ii) certificate;

130 (iii) diligence claim;

131 (iv) water user's claim;

132 (v) approved application to appropriate water;

133 (vi) approved application to permanently change the place of use of water; or

134 (vii) approved exchange application.

135 (d) If a grantor conveys part of the water right in a land conveyance document
136 pursuant to Subsection (1)(b), the portion of the water right not conveyed is presumed to be
137 reserved by the grantor.

138 (e) If the land conveyed constitutes only a portion of the authorized place of use for
139 the water right, the amount of the appurtenant water right that passes to the grantee shall be
140 proportionate to the conveyed portion of the authorized place of use.

141 (6) Beginning July 1, 2011, a deed conveying fee simple title to land may include a

142 water rights addendum as provided in Section 57-3-109.