

1 **WATER AND IRRIGATION AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Margaret Dayton**

5 House Sponsor: Ryan D. Wilcox

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 73, Water and Irrigation, relating to forfeiture of a water right,
10 rulemaking authority of the state engineer, application for an extension of time to prove
11 beneficial use, and how an engineer or land surveyor provides information for certain
12 claims.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ modifies provisions regarding forfeiture of a water right;
- 16 ▶ changes some of the state engineer's mandatory rulemaking authority to permissive
17 rulemaking authority;
- 18 ▶ requires a wholesale electrical cooperative to provide certain information upon
19 applying for an extension of time to prove beneficial use;
- 20 ▶ removes the requirement that an engineer or land surveyor verify by oath certain
21 information in a claim to surface or underground water not otherwise appropriated;
- 22 and
- 23 ▶ makes technical changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **73-1-4**, as last amended by Laws of Utah 2009, Chapter 388
- 31 **73-2-1**, as last amended by Laws of Utah 2008, Chapters 360 and 382
- 32 **73-2-22**, as enacted by Laws of Utah 1984, Chapter 33
- 33 **73-3-12**, as last amended by Laws of Utah 2009, Chapters 247 and 388
- 34 **73-3-16**, as last amended by Laws of Utah 2010, Chapter 108
- 35 **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136



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

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

39 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
40 **seven years -- Nonuse application.**

41 (1) As used in this section:

42 (a) "Public entity" means:

43 (i) the United States;

44 (ii) an agency of the United States;

45 (iii) the state;

46 (iv) a state agency;

47 (v) a political subdivision of the state; or

48 (vi) an agency of a political subdivision of the state.

49 (b) "Public water supplier" means an entity that:

50 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
51 industrial use; and

52 (ii) is:

53 (A) a public entity;

54 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public
55 Service Commission;

56 (C) a community water system:

57 (I) that:

- 58 (Aa) supplies water to at least 100 service connections used by year-round residents; or
- 59 (Bb) regularly serves at least 200 year-round residents; and
- 60 (II) whose voting members:
 - 61 (Aa) own a share in the community water system;
 - 62 (Bb) receive water from the community water system in proportion to the member's
 - 63 share in the community water system; and
 - 64 (Cc) pay the rate set by the community water system based on the water the member
 - 65 receives; or
 - 66 (D) a water users association:
 - 67 (I) in which one or more public entities own at least 70% of the outstanding shares; and
 - 68 (II) that is a local sponsor of a water project constructed by the United States Bureau of
 - 69 Reclamation.
- 70 (c) "Shareholder" is as defined in Section 73-3-3.5.
- 71 (d) "Water company" is as defined in Section 73-3-3.5.
- 72 (e) "Water supply entity" means an entity that supplies water as a utility service or for
- 73 irrigation purposes and is also:
 - 74 (i) a municipality, water conservancy district, metropolitan water district, irrigation
 - 75 district, or other public agency;
 - 76 (ii) a water company regulated by the Public Service Commission; or
 - 77 (iii) any other owner of a community water system.
- 78 (2) (a) When an appropriator or the appropriator's successor in interest abandons or
- 79 ceases to use all or a portion of a water right for a period of seven years, the water right or the
- 80 unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c),
- 81 unless the appropriator or the appropriator's successor in interest files a nonuse application
- 82 with the state engineer.
 - 83 (b) (i) A nonuse application may be filed on all or a portion of the water right,
 - 84 including water rights held by a water company.
 - 85 (ii) After giving written notice to the water company, a shareholder may file a nonuse

86 application with the state engineer on the water represented by the stock.

87 (c) (i) ~~[A] Except as provided in Subsection (2)(c)(ii), a water right or a portion of the~~
88 water right may not be forfeited unless a judicial action to declare the right forfeited is
89 commenced within 15 years from the end of the latest period of nonuse of at least seven years.

90 ~~[(ii) If forfeiture is asserted in an action for general determination of rights in~~
91 ~~conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year~~
92 ~~limitation period shall commence to run back in time from the date the state engineer's~~
93 ~~proposed determination of rights is served upon each claimant.]~~

94 ~~[(iii) A decree entered in an action for general determination of rights under Chapter 4,~~
95 ~~Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any~~
96 ~~right determined to be valid in the decree, but does not bar a claim for periods of nonuse that~~
97 ~~occur after the entry of the decree.]~~

98 ~~[(iv) A proposed determination by the state engineer in an action for general~~
99 ~~determination of rights under Chapter 4, Determination of Water Rights, bars a claim of~~
100 ~~forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has~~
101 ~~been filed within the time allowed in Chapter 4, Determination of Water Rights.]~~

102 (ii) (A) The state engineer, in a proposed determination of rights prepared in
103 accordance with Section 73-4-11, may not assert that a water right was forfeited unless a period
104 of nonuse of seven years ends or occurs during the 15 years immediately preceding the day on
105 which the state engineer files the proposed determination of rights with the court.

106 (B) After the day on which a proposed determination of rights is filed with the court a
107 person may not assert that a water right subject to that determination was forfeited during the
108 15-year period described in Subsection (2)(c)(ii)(A), unless the state engineer asserts forfeiture
109 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an
110 objection to the proposed determination that asserts forfeiture.

111 (iii) A water right, found to be valid in a decree entered in an action for general
112 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
113 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state

114 engineer filed the related proposed determination of rights with the court, unless the decree
115 provides otherwise.

116 ~~(v)~~ (iv) If in a judicial action a court declares a water right forfeited, on the date on
117 which the water right is forfeited:

118 (A) the right to use the water reverts to the public; and

119 (B) the water made available by the forfeiture:

120 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

121 and

122 (II) second, may be appropriated as provided in this title.

123 (d) This section applies whether the unused or abandoned water or a portion of the
124 water is:

125 (i) permitted to run to waste; or

126 (ii) used by others without right with the knowledge of the water right holder.

127 (e) This section does not apply to:

128 (i) the use of water according to a lease or other agreement with the appropriator or the
129 appropriator's successor in interest;

130 (ii) a water right if its place of use is contracted under an approved state agreement or
131 federal conservation fallowing program;

132 (iii) those periods of time when a surface water or groundwater source fails to yield
133 sufficient water to satisfy the water right;

134 (iv) a water right when water is unavailable because of the water right's priority date;

135 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
136 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

137 (A) the water is stored for present or future use; or

138 (B) storage is limited by a safety, regulatory, or engineering restraint that the
139 appropriator or the appropriator's successor in interest cannot reasonably correct;

140 (vi) a water right if a water user has beneficially used substantially all of the water right
141 within a seven-year period, provided that this exemption does not apply to the adjudication of a

142 water right in a general determination of water rights under Chapter 4, Determination of Water
143 Rights;

144 (vii) except as provided by Subsection (2)(g), a water right:

145 (A) (I) owned by a public water supplier;

146 (II) represented by a public water supplier's ownership interest in a water company; or

147 (III) to which a public water supplier owns the right of use; and

148 (B) conserved or held for the reasonable future water requirement of the public, which
149 is determined according to Subsection (2)(f);

150 (viii) a supplemental water right during a period of time when another water right
151 available to the appropriator or the appropriator's successor in interest provides sufficient water
152 so as to not require use of the supplemental water right; or

153 (ix) a water right subject to an approved change application where the applicant is
154 diligently pursuing certification.

155 (f) (i) The reasonable future water requirement of the public is the amount of water
156 needed in the next 40 years by the persons within the public water supplier's projected service
157 area based on projected population growth or other water use demand.

158 (ii) For purposes of Subsection (2)(f)(i), a community water system's projected service
159 area:

160 (A) is the area served by the community water system's distribution facilities; and

161 (B) expands as the community water system expands the distribution facilities in
162 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

163 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
164 Subsection (2)(e)(vii) applies if:

165 (i) the public water supplier submits a change application under Section 73-3-3; and

166 (ii) the state engineer approves the change application.

167 (3) (a) The state engineer shall furnish a nonuse application form requiring the
168 following information:

169 (i) the name and address of the applicant;

170 (ii) a description of the water right or a portion of the water right, including the point of
171 diversion, place of use, and priority;

172 (iii) the quantity of water;

173 (iv) the period of use;

174 (v) the extension of time applied for;

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

176 (vii) any other information that the state engineer requires.

177 (b) (i) Filing the nonuse application extends the time during which nonuse may
178 continue until the state engineer issues an order on the nonuse application.

179 (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse
180 from the application's filing date until the approved application's expiration date.

181 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
182 application once a week for two successive weeks:

183 (A) in a newspaper of general circulation in the county in which the source of the water
184 supply is located and where the water is to be used; and

185 (B) as required in Section 45-1-101.

186 (ii) The notice shall:

187 (A) state that an application has been made; and

188 (B) specify where the interested party may obtain additional information relating to the
189 application.

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

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

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

196 (e) In any proceedings to determine whether the nonuse application should be approved
197 or rejected, the state engineer shall follow the procedures and requirements of Title 63G,

198 Chapter 4, Administrative Procedures Act.

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

200 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
201 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
202 for nonuse.

203 (b) A reasonable cause for nonuse includes:

204 (i) a demonstrable financial hardship or economic depression;

205 (ii) the initiation of water conservation or efficiency practices, or the operation of a
206 groundwater recharge recovery program approved by the state engineer;

207 (iii) operation of legal proceedings;

208 (iv) the holding of a water right or stock in a mutual water company without use by any
209 water supply entity to meet the reasonable future requirements of the public;

210 (v) situations where, in the opinion of the state engineer, the nonuse would assist in
211 implementing an existing, approved water management plan; or

212 (vi) the loss of capacity caused by deterioration of the water supply or delivery
213 equipment if the applicant submits, with the application, a specific plan to resume full use of
214 the water right by replacing, restoring, or improving the equipment.

215 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
216 notify the applicant by mail or by any form of electronic communication through which receipt
217 is verifiable, of the date when the nonuse application will expire.

218 (b) An applicant may file a subsequent nonuse application in accordance with this
219 section.

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

221 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

222 (1) There shall be a state engineer.

223 (2) The state engineer shall:

224 (a) be appointed by the governor with the consent of the Senate;

225 (b) hold office for the term of four years and until a successor is appointed; and

226 (c) have five years experience as a practical engineer or the theoretical knowledge,
227 practical experience, and skill necessary for the position.

228 (3) (a) The state engineer shall be responsible for the general administrative
229 supervision of the waters of the state and the measurement, appropriation, apportionment, and
230 distribution of those waters.

231 (b) The state engineer may secure the equitable apportionment and distribution of the
232 water according to the respective rights of appropriators.

233 (4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah
234 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,
235 regarding:

236 (a) reports of water right conveyances;

237 (b) the construction of water wells and the licensing of water well drillers;

238 (c) dam construction and safety;

239 (d) the alteration of natural streams;

240 [~~(e) sewage effluent reuse;~~]

241 [~~(f)~~ (e) geothermal resource conservation; and

242 [~~(g)~~ (f) enforcement orders and the imposition of fines and penalties.

243 (5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah
244 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,
245 governing:

246 (a) water distribution systems and water commissioners;

247 (b) water measurement and reporting;

248 (c) groundwater recharge and recovery;

249 (d) wastewater reuse;

250 (e) the form, content, and processing procedure for a claim under Section 73-5-13 to
251 surface or underground water that is not represented by a certificate of appropriation;

252 (f) the form and content of a proof submitted to the state engineer under Section
253 73-3-16;

254 [~~(d)~~] (g) the determination of water rights; [~~and~~] or
255 [~~(e)~~] (h) the form and content of applications and related documents, maps, and reports.

256 (6) The state engineer may bring suit in courts of competent jurisdiction to:

257 (a) enjoin the unlawful appropriation, diversion, and use of surface and underground
258 water without first seeking redress through the administrative process;

259 (b) prevent theft, waste, loss, or pollution of those waters;

260 (c) enable him to carry out the duties of the state engineer's office; and

261 (d) enforce administrative orders and collect fines and penalties.

262 (7) The state engineer may:

263 (a) upon request from the board of trustees of an irrigation district under Title 17B,
264 Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited
265 Purpose Local Government Entities - Local Districts, or a special service district under Title
266 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a
267 water survey to be made of all lands proposed to be annexed to the district in order to
268 determine and allot the maximum amount of water that could be beneficially used on the land,
269 with a separate survey and allotment being made for each 40-acre or smaller tract in separate
270 ownership; and

271 (b) upon completion of the survey and allotment under Subsection (7)(a), file with the
272 district board a return of the survey and report of the allotment.

273 (8) (a) The state engineer may establish water distribution systems and define their
274 boundaries.

275 (b) The water distribution systems shall be formed in a manner that:

276 (i) secures the best protection to the water claimants; and

277 (ii) is the most economical for the state to supervise.

278 Section 3. Section **73-2-22** is amended to read:

279 **73-2-22. Emergency flood powers -- Action to enforce orders -- Access rights to**
280 **private and public property -- Injunctive relief against state engineer's decisions --**
281 **Judicial review provisions not applicable.**

282 Whenever the state engineer, with approval of the [~~chairman~~] chair of the [~~Disaster~~
283 ~~Emergency Advisory Council;~~] Emergency Management Administration Council created in
284 Section 63K-3-201, makes a written finding that any reservoir or stream has reached or will
285 reach during the current water year a level far enough above average and in excess of capacity
286 that public safety is or is likely to be endangered or that substantial property damage is
287 occurring or is likely to occur, he shall have emergency powers until the danger to the public
288 and property is abated. Emergency powers shall consist of the authority to control stream flow
289 and reservoir storage or release. The state engineer must protect existing water rights to the
290 maximum extent possible when exercising emergency powers. Any action taken by the state
291 engineer under this section shall be by written order.

292 If any person refuses or neglects to comply with any order of the state engineer issued
293 pursuant to his emergency powers, the state engineer may bring action in the name of the state
294 in the district court to enforce them. In carrying out his emergency powers, the state engineer
295 shall have rights of access to private and public property.

296 Any person affected by a decision of the state engineer made under his emergency
297 powers shall have the right to seek injunctive relief, including temporary restraining orders and
298 temporary injunctions in any district court of the county where that person resides. No order of
299 the state engineer shall be enjoined or set aside unless shown by clear and convincing evidence
300 that an emergency does not in fact exist or that the order of the state engineer is arbitrary or
301 capricious. The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any
302 order of the state engineer issued pursuant to this section.

303 Section 4. Section **73-3-12** is amended to read:

304 **73-3-12. Time limit on construction and application to beneficial use --**
305 **Extensions -- Procedures and criteria.**

306 (1) As used in this section:

307 (a) "Public water supplier" is as defined in Section 73-1-4.

308 (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.

309 (2) (a) Within the time set by the state engineer under Subsection 73-3-10(5), an

310 applicant shall:

- 311 (i) construct works, if necessary;
- 312 (ii) apply the water to beneficial use; and
- 313 (iii) file proof with the state engineer in accordance with Section 73-3-16.

314 (b) Except as provided by Subsection (4), the state engineer shall extend the time in
315 which an applicant shall comply with Subsection (2)(a) if:

316 (i) the date set by the state engineer is not after 50 years from the day on which the
317 application is approved; and

318 (ii) the applicant shows:

319 (A) reasonable and due diligence in completing the appropriation; or

320 (B) a reasonable cause for delay in completing the appropriation.

321 (c) An applicant shall file a request for an extension of time with the state engineer on
322 or before the date set for filing proof.

323 (d) The state engineer may grant an extension of time authorized by Subsection (2)(b)
324 if the state engineer sets a date:

325 (i) no later than 14 years from the day on which the application is approved if the
326 applicant meets the requirements of Subsection (2)(b); and

327 (ii) after 14 years from the day on which the application is approved if:

328 (A) the applicant meets the requirements of Subsection (2)(b); and

329 (B) the state engineer publishes notice as provided in Subsection (2)(e).

330 (e) (i) The state engineer shall publish a notice of the request for an extension of time:

331 (A) once a week for two successive weeks, in a newspaper of general circulation, in the
332 county:

333 (I) in which the water source is located; and

334 (II) where the water will be used; and

335 (B) in accordance with Section 45-1-101 for two weeks.

336 (ii) The notice shall:

337 (A) state that a request for an extension of time has been made; and

338 (B) specify where an interested party may obtain additional information relating to the
339 request.

340 (f) A person who owns a water right or holds an application from the water source
341 referred to in Subsection (2)(e) may file a protest with the state engineer:

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

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

346 (g) The approved extension of time is effective so long as the applicant continues to
347 exercise reasonable and due diligence in completing the appropriation.

348 (h) The state engineer shall consider the holding of an approved application by a public
349 water supplier or a wholesale electrical cooperative to meet the reasonable future water or
350 electricity requirements of the public to be reasonable and due diligence in completing the
351 appropriation for the purposes of this section for 50 years from the date on which the
352 application is approved.

353 (i) If the state engineer finds unreasonable delay or lack of reasonable and due
354 diligence in completing the appropriation, the state engineer may:

355 (i) deny the extension of time; or

356 (ii) grant the request in part or upon conditions, including a reduction of the priority of
357 all or part of the application.

358 (3) Except as provided by Subsection (4), an application upon which proof has not
359 been filed shall lapse and have no further force or effect after 50 years from the date on which
360 the application is approved.

361 (4) (a) If the works are constructed with which to make beneficial use of the water
362 applied for, the state engineer may, upon showing of that fact, extend the time in which to file
363 proof by setting a date after 50 years from the day on which the application is approved.

364 (b) (i) The state engineer may extend the time in which the applicant shall comply with
365 Subsection (2)(a) by setting a date after 50 years from the day on which the application is

366 approved if the applicant:

367 (A) is[~~;~~ (A)] a public water supplier[;] or [(A)] a wholesale electrical cooperative; and

368 (B) provides information that shows the water applied for in the application is needed
369 to meet the reasonable future requirements of the public.

370 (ii) The information provided by a public water supplier shall be in accordance with the
371 criteria listed in Subsection 73-1-4(2)(f).

372 (iii) A wholesale electrical cooperative shall provide the information described in
373 Subsection (4)(b)(i)(B) in a report that forecasts:

374 (A) the need for the water to produce power; and

375 (B) the power output of the project for the wholesale electrical cooperative within the
376 next 40 years.

377 (c) The state engineer shall extend the time in which to file proof by setting a
378 reasonable date after 50 years from the day on which the application is approved if the
379 applicant:

380 (i) meets the requirements in Subsection (4)(b); and

381 (ii) has:

382 (A) constructed works to apply the water to beneficial use; or

383 (B) made substantial expenditures to construct the works.

384 Section 5. Section **73-3-16** is amended to read:

385 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**
386 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**
387 **Statement in lieu of proof of appropriation or change.**

388 (1) Sixty days before the date set for the proof of appropriation or proof of change to be
389 made, the state engineer shall notify the applicant by mail when proof of completion of the
390 works and application of the water to a beneficial use is due.

391 (2) On or before the date set for completing the proof in accordance with the
392 application, the applicant shall file proof with the state engineer on forms furnished by the state
393 engineer.

394 (3) Except as provided in Subsection (4), the applicant shall submit the following
395 information:

- 396 (a) a description of the works constructed;
- 397 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
- 398 (c) the method of applying the water to beneficial use; and
- 399 (d) (i) detailed measurements of water put to beneficial use;
- 400 (ii) the date the measurements were made; and
- 401 (iii) the name of the person making the measurements.

402 (4) (a) (i) On applications filed for appropriation or permanent change of use of water
403 to provide a water supply for state projects constructed pursuant to Title 73, Chapter 10, Board
404 of Water Resources - Division of Water Resources, or for federal projects constructed by the
405 United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its
406 political subdivisions, public and quasi-municipal corporations, or water users' associations of
407 which the state, its agencies, political subdivisions, or public and quasi-municipal corporations
408 are stockholders, the proof shall include:

- 409 (A) a statement indicating construction of the project works has been completed;
 - 410 (B) a description of the major features with appropriate maps, profiles, drawings, and
411 reservoir area-capacity curves;
 - 412 (C) a description of the point or points of diversion and rediversion;
 - 413 (D) project operation data;
 - 414 (E) a map showing the place of use of water and a statement of the purpose and method
415 of use;
 - 416 (F) the project plan for beneficial use of water under the applications and the quantity
417 of water required; and
 - 418 (G) a statement indicating what type of measuring devices have been installed.
- 419 (ii) The director of the Division of Water Resources shall sign proofs for the state
420 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the
421 federal projects specified in Subsection (4)(a).

422 (b) Proof on an application for appropriation or permanent change for a surface storage
423 facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water
424 supply for the reasonable requirements of the public shall include:

- 425 (i) a description of the completed water storage facility;
- 426 (ii) a description of the major project features and appropriate maps, profiles, drawings,
427 and reservoir area-capacity curves as required by the state engineer;
- 428 (iii) the quantity of water stored in acre-feet;
- 429 (iv) a description of the water distribution facility for the delivery of the water; and
- 430 (v) the project plan for beneficial use of water including any existing contracts for
431 water delivery.

432 [~~(c) The completed proof shall conform to rules established by the state engineer.~~]

433 (5) The proof on all applications shall be sworn to by the applicant or the applicant's
434 appointed representative [~~and proof engineer~~].

435 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall
436 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed
437 professional engineer that show:

- 438 (i) the location of the completed works;
- 439 (ii) the nature and extent of the completed works;
- 440 (iii) the natural stream or source from which and the point where the water is diverted
441 and, in the case of a nonconsumptive use, the point where the water is returned; and
- 442 (iv) the place of use.

443 (b) The state engineer may waive the filing of maps, profiles, and drawings if in the
444 state engineer's opinion the written proof adequately describes the works and the nature and
445 extent of beneficial use.

446 [~~(7) The completed proof shall conform to rules and standards established by the state
447 engineer.~~]

448 [(8)] (7) In those areas in which general determination proceedings are pending, or
449 have been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state

450 engineer may petition the district court for permission to:

451 (a) waive the requirements of this section and Section 73-3-17; and

452 (b) permit each owner of an application to file a verified statement to the effect that the
453 applicant has completed the appropriation or change and elects to file a statement of water
454 users claim in the proposed determination of water rights or any supplement to it in accordance
455 with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or
456 proof of change.

457 [~~9~~] (8) This section does not apply to an instream flow water right authorized by
458 Section 73-3-30.

459 Section 6. Section **73-5-13** is amended to read:

460 **73-5-13. Claim to surface or underground water not otherwise represented --**
461 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**
462 **action to determine validity -- Rules.**

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

467 (b) Subsections (2) through [~~7~~] (6) shall only apply to claims submitted to the state
468 engineer pursuant to this section after May 4, 1997.

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

472 (i) the name and post office address of the person making the claim;

473 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,
474 where appropriate;

475 (iii) the source of supply;

476 (iv) the priority date of the right;

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

478 corner;

479 (vi) the place of use;

480 (vii) the nature and extent of use;

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

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

483 (b) The claim shall also include the following information [~~verified under oath by a~~
484 ~~registered engineer or land surveyor~~], prepared by a Utah licensed engineer or a Utah licensed
485 land surveyor:

486 (i) measurements of the amount of water diverted;

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

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

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

495 (i) affidavits setting forth facts of which the affiant has personal knowledge;

496 (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;

497 (iii) authenticated copies of original diaries, personal histories, or other historical
498 documents which document the claimed use of water; and

499 (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's
500 office.

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

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

504 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under
505 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay

506 the expenses of conducting a field investigation and publishing a notice of the claim, the state
507 engineer shall:

- 508 (i) file the claim;
- 509 (ii) endorse the date of its receipt;
- 510 (iii) assign the claim a water right number; and
- 511 (iv) publish a notice of the claim following the same procedures as provided in Section
512 73-3-6.

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

515 (c) The acceptance of any claim filed under this section by the state engineer may not
516 be considered to be an adjudication by the state engineer of the validity of the claimed water
517 right.

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

- 519 (i) conduct a field investigation of each claim filed; and
- 520 (ii) prepare a report of the investigation.

521 (b) The report of the investigation shall:

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

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

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

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

533 (d) In any action brought to determine the validity of a claim to the use of water under

534 this section, the claimant shall have the initial burden of proof as to the validity of the claimed
535 right.

536 (e) Any person filing an action challenging the validity of a claim to the use of water
537 under this section shall notify the state engineer of the pendency of the action in a manner
538 prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no
539 action on any change or exchange applications founded on the claim that is the subject of the
540 pending litigation, until the court adjudicates the matter.

541 (f) Upon the entering of any final order or decree in any judicial action to determine the
542 validity of a claim under this section, the prevailing party shall file a certified copy of the order
543 or decree with the state engineer, which shall become part of the state engineer's file on the
544 claim.

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