

DIVISION OF WATER RIGHTS REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill modifies provisions of Title 73, Water and Irrigation, regarding fixed time period applications and claims to surface or underground water not otherwise represented.

Highlighted Provisions:

This bill:

- ▶ modifies provisions of Title 73, Water and Irrigation, regarding:
 - fixed time period applications; and
 - claims to surface or underground water not otherwise represented; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with S.B. 30, Water and Irrigation Amendments, by providing a technical amendment.

This bill coordinates with H.B. 29, Adjudication of Water Rights, by providing a substantive amendment.

Utah Code Sections Affected:

AMENDS:

73-3-10, as last amended by Laws of Utah 1997, Chapter 48

73-3-18, as last amended by Laws of Utah 2011, Chapter 86

73-3-20, as last amended by Laws of Utah 2012, Chapter 163

30 73-5-13, as last amended by Laws of Utah 2001, Chapter 136

31 **Utah Code Sections Affected by Coordination Clause:**

32 73-5-13, as last amended by Laws of Utah 2001, Chapter 136



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

35 Section 1. Section 73-3-10 is amended to read:

36 **73-3-10. Approval or rejection of application.**

37 ~~[(1) When the approval or rejection of an application is decided, a record of the~~
38 ~~decision shall be made in the state engineer's office.]~~

39 (1) When the state engineer approves or rejects an application, the state engineer shall
40 record the approval decision or rejection decision in the state engineer's office.

41 ~~[(2) The state engineer's decision shall be mailed to the applicant.]~~

42 (2) On the same day on which the state engineer makes an approval decision or
43 rejection decision described in Subsection (1), the state engineer shall mail the decision to the
44 applicant.

45 (3) If ~~[the]~~ an application is approved, the applicant ~~[shall be authorized upon receipt~~
46 ~~of the decision to:]~~ may, upon receipt of the approval decision:

47 (a) proceed with the construction of the necessary works;

48 (b) take any steps required to apply the water to the use ~~[named]~~ described in the
49 application; and

50 (c) perfect the proposed application.

51 (4) If the application is rejected, the applicant ~~[shall take no]~~ may not take steps toward
52 the prosecution of ~~[the proposed work or the diversion and use of the public water under the~~
53 ~~application.];~~

54 (a) the work proposed in the application; or

55 (b) the proposed diversion and use of the public water in the application.

56 ~~[(5) The state engineer shall state in any decision approving an application the time~~
57 ~~within which the construction work must be completed and the water applied to beneficial use.]~~

58 (5) In a decision approving an application, other than an application for a fixed time
59 period, the state engineer shall state the time within which:

60 (a) the construction work must be completed; and

61 (b) the water must be applied to beneficial use.

62 Section 2. Section **73-3-18** is amended to read:

63 **73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities --**
64 **Assignment of application -- Filing and recording -- Constructive notice -- Effect of**
65 **failure to record.**

66 (1) When an application lapses for failure of the applicant to comply with this title's
67 provisions or the state engineer's order, the state engineer shall promptly give notice of the
68 lapse [~~shall promptly be given~~] to the applicant by regular mail.

69 (2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer
70 may, upon a showing of reasonable cause, reinstate the application with the date of priority
71 changed to the date of reinstatement.

72 (3) The original priority date of a lapsed application may not be reinstated, except upon
73 a showing of fraud or mistake of the state engineer.

74 (4) Except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20, or
75 Subsection (2), the priority of an application is determined by the day on which the state
76 engineer's office receives the written application.

77 (5) Before the state engineer issues a certificate of appropriation, a right claimed under
78 an application for the appropriation of water may be transferred or assigned by a written
79 instrument.

80 [~~(4) The priority of an application shall be determined by the date of receiving the~~
81 ~~written application in the state engineer's office, except as provided in Section 73-3-12 and as~~
82 ~~provided in this section.~~]

83 [~~(5) Before issuance of a certificate of appropriation, rights claimed under applications~~
84 ~~for the appropriation of water may be transferred or assigned by instruments in writing.~~]

85 (6) An instrument transferring or assigning a right described in Subsection (5), when

86 acknowledged or proved and certified in the manner provided by law for the acknowledgment
87 or proving of conveyances of real estate, may be filed in the office of the state engineer and
88 shall from time of filing impart notice to all persons of the contents thereof.

89 (7) ~~[Every assignment of an application]~~ An instrument described in Subsection (6)
90 that is not filed as ~~[provided by this section]~~ described in Subsection (6) is void ~~[as]~~ against any
91 subsequent assignee in good faith and for valuable consideration of the same application or any
92 portion ~~[thereof where]~~ of the same application, if the subsequent assignee's own assignment is
93 [first duly filed] filed as described in Subsection (6) first.

94 Section 3. Section **73-3-20** is amended to read:

95 **73-3-20. Right to divert appropriated waters into natural streams --**
96 **Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse**
97 **of application.**

98 (1) Upon application in writing and approval of the state engineer, any appropriated
99 water may, for the purpose of preventing waste and facilitating distribution, be turned from the
100 channel of any stream or any lake or other body of water, into the channel of any natural stream
101 or natural body of water or into a reservoir constructed across the bed of any natural stream,
102 and commingled with its waters, and a like quantity less the quantity lost by evaporation and
103 seepage may be taken out, either above or below the point where emptied into the stream, body
104 of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir
105 must not be deteriorated in quality or diminished in quantity for the purpose used, and the
106 additional water turned in shall bear its share of the expense of maintenance of such reservoir
107 and an equitable proportion of the cost of the reservoir site and its construction. Any person
108 having stored that person's appropriated water in a reservoir for a beneficial purpose shall be
109 permitted to withdraw the water at the times and in the quantities as the person's necessities
110 may require if the withdrawal does not interfere with the rights of others.

111 (2) (a) The state engineer may require an owner of an approved exchange application to
112 provide:

113 (i) information about the diverting works constructed;

114 (ii) information about the extent to which the development under the exchange has
115 occurred; or

116 (iii) other information the state engineer considers necessary to:

117 (A) ensure that the exchange is taking place;

118 (B) establish that the owner still has a legal interest in the underlying water right used
119 as the basis for the exchange; or

120 (C) determine the quantity of water being exchanged.

121 (b) The owner of an exchange application shall provide the information requested by
122 the state engineer within 60 days after the day on which the owner received the notification
123 from the state engineer.

124 (3) The state engineer may lapse an approved exchange application described in
125 Subsection (1) if:

126 (a) the applicant has lost a legal interest in the underlying right used to facilitate the
127 exchange;

128 (b) the exchange can no longer be carried out as stated in the application;

129 (c) the applicant has not complied with the conditions established in approving the
130 exchange; or

131 (d) the applicant fails to provide the information requested by the state engineer under
132 Subsection (2).

133 (4) (a) Notwithstanding Section 73-3-18, the state engineer may reinstate an exchange
134 application that was lapsed by the state engineer under Subsection (3), if:

135 (i) the applicant files with the state engineer a written request to reinstate the exchange
136 application;

137 (ii) the exchange application is for a small amount of water, as defined in Section
138 73-3-5.6;

139 (iii) the applicant demonstrates that, before the exchange application lapsed, the
140 applicant or the applicant's predecessor in interest, in accordance with the exchange
141 application:

142 (A) constructed and occupied a residence; and
 143 (B) beneficially used the water at the residence; and
 144 (iv) the applicant demonstrates that none of the conditions described in Subsection (3)
 145 for lapsing an approved exchange application still exist.

146 (b) ~~[Notwithstanding Section 73-3-18, the]~~ The priority of an exchange application
 147 reinstated under this section shall be the day on which the applicant files a request to reinstate
 148 an exchange application that was lapsed by the state engineer.

149 Section 4. Section **73-5-13** is amended to read:

150 **73-5-13. Claim to surface or underground water not otherwise represented --**
 151 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**
 152 **action to determine validity -- Rules.**

153 (1) (a) ~~[All claimants]~~ A claimant to the right to the use of water, including both
 154 surface and underground water, whose ~~[rights are]~~ right is not represented by ~~[certificates]~~ a
 155 certificate of appropriation issued by the state engineer, by ~~[applications]~~ an application filed
 156 with the state engineer, by ~~[court decrees]~~ a court decree, or by a notice of claim filed pursuant
 157 to law, shall submit the claim to the state engineer in accordance with this section.

158 (b) Subsections (2) through (7) ~~[shall]~~ only apply to claims or corrected claims
 159 submitted to the state engineer ~~[pursuant to]~~ in accordance with this section on or after May [~~4,~~
 160 ~~1997]~~ 14, 2013.

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

- 165 (i) the name and ~~[post office]~~ mailing address of the person making the claim;
- 166 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,
 167 where appropriate;
- 168 (iii) the source of supply;
- 169 (iv) the priority date of the right;

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

172 (vi) the place of use;

173 (vii) the nature and extent of use;

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

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

176 (b) The claim shall also include the following information verified under oath by a
177 registered engineer or land surveyor:

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

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

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

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

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

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

189 (iii) authenticated copies of original diaries, personal histories, or other historical
190 documents ~~[which]~~ that document the claimed use of water; and

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

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

195 ~~[(b) No fee shall be charged for submitting a corrected claim.]~~

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

- 198 (i) is designated as a corrected claim;
- 199 (ii) includes the information described in Subsection (2); and
- 200 (iii) bears the same number as the original claim.
- 201 (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is
- 202 filed before the state engineer publishes the original claim in accordance with Subsection
- 203 (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.
- 204 (c) The state engineer shall treat a corrected claim that is filed in accordance with
- 205 Subsection (3)(a) as if the corrected claim were the original claim.
- 206 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under
- 207 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay
- 208 the expenses of conducting a field investigation and publishing a notice of the claim, the state
- 209 engineer shall:
- 210 (i) file the claim;
- 211 (ii) endorse the date of its receipt;
- 212 (iii) assign the claim a water right number; and
- 213 (iv) publish a notice of the claim following the same procedures as provided in Section
- 214 73-3-6.
- 215 (b) Any claim not acceptably complete under Subsection (2) shall be returned to the
- 216 claimant.
- 217 (c) The acceptance of any claim filed under this section by the state engineer may not
- 218 be considered to be an adjudication by the state engineer of the validity of the claimed water
- 219 right.
- 220 (5) (a) The state engineer shall:
- 221 (i) conduct a field investigation of each claim filed; and
- 222 (ii) prepare a report of the investigation.
- 223 (b) The report of the investigation shall:
- 224 (i) become part of the file on the claim; and
- 225 (ii) be admissible in any administrative or judicial proceeding [om] regarding the

226 validity of the claim.

227 (6) (a) Any person who may be damaged by a diversion and use of water as described
228 in a claim submitted pursuant to this section may file an action in district court to determine the
229 validity of the claim, ~~[whether or not the claim has been accepted for filing by the state~~
230 ~~engineer]~~ regardless of whether the state engineer has filed the claim in accordance with
231 Subsection (4)(a).

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

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

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

240 (e) (i) ~~[Any]~~ A person filing an action challenging the validity of a claim to the use of
241 water under this section shall notify the state engineer of the pendency of the action in ~~[a~~
242 ~~manner prescribed by the state engineer]~~ accordance with state engineer rules.

243 (ii) Upon receipt of the notice, the state engineer may take no action on any change or
244 exchange applications founded on the claim that is the subject of the pending litigation[;] until
245 the court adjudicates the matter.

246 (f) Upon the entering of any final order or decree in ~~[any]~~ a judicial action to determine
247 the validity of a claim under this section, the prevailing party shall file a certified copy of the
248 order or decree with the state engineer, ~~[which shall become part of]~~ who shall incorporate the
249 order into the state engineer's file on the claim.

250 (7) (a) In a general adjudication of water rights under Title 73, Chapter 4,
251 Determination of Water Rights, after completion of final summons in accordance with Section
252 73-4-22, a district court may, by decree, prohibit future claims from being filed under this
253 section in the general adjudication area.

254 (b) If the state engineer receives a claim for an area where a court has prohibited filing
255 under Subsection (7)(a), the state engineer shall return the claim to the claimant without further
256 action.

257 [~~7~~] (8) The state engineer may make rules consistent with this section specifying
258 information required to be included in a claim and claim procedures.

259 **Section 5. Coordinating S.B. 101 with S.B. 30 -- Technical amendments.**

260 If this S.B. 101 and S.B. 30, Water and Irrigation Amendments, both pass and become
261 law, the Legislature intends that Subsection 73-5-13(1)(b) in this S.B. 101 supersedes
262 Subsection 73-5-13(1)(b) in S.B. 30, when the Office of Legislative Research and General
263 Counsel prepares the Utah Code database for publication.

264 **Section 6. Coordinating S.B. 101 with H.B. 29 -- Substantive amendments.**

265 If this S.B. 101 and H.B. 29, Adjudication of Water Rights, both pass and become law,
266 the Legislature intends that the Office of Legislative Research and General Counsel shall
267 prepare the Utah Code database for publication by amending Subsection 73-5-13(7)(a) to read
268 as follows:

269 "(7) (a) In a general adjudication of water rights under Title 73, Chapter 4,
270 Determination of Water Rights, after completion of final summons in accordance with Section
271 73-4-22, a district court may, by decree, prohibit future claims from being filed under this
272 section in the general adjudication area, division, or subdivision."