



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **73-1-4**, as last amended by Laws of Utah 2009, Chapter 388

34 **73-2-1**, as last amended by Laws of Utah 2008, Chapters 360 and 382

35 **73-2-22**, as enacted by Laws of Utah 1984, Chapter 33

36 **73-3-12**, as last amended by Laws of Utah 2009, Chapters 247 and 388

37 **73-3-16**, as last amended by Laws of Utah 2010, Chapter 108

38 **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136



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

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

42 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**  
43 **seven years -- Nonuse application.**

44 (1) As used in this section:

45 (a) "Public entity" means:

46 (i) the United States;

47 (ii) an agency of the United States;

48 (iii) the state;

49 (iv) a state agency;

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

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

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

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

55 (ii) is:

56 (A) a public entity;

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

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

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

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

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

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

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

109 (B) After the day on which a proposed determination of rights is filed with the court a  
110 person may not assert that a water right subject to that determination was forfeited during the  
111 15-year period described in Subsection (2)(c)(ii)(A), unless the state engineer asserts forfeiture  
112 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an  
113 objection to the proposed determination that asserts forfeiture.

114 (iii) A water right, found to be valid in a decree entered in an action for general  
115 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim  
116 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state  
117 engineer filed the related proposed determination of rights with the court, unless the decree  
118 provides otherwise.

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

- 121 (A) the right to use the water reverts to the public; and  
122 (B) the water made available by the forfeiture:  
123 (I) first, satisfies other water rights in the hydrologic system in order of priority date;  
124 and  
125 (II) second, may be appropriated as provided in this title.  
126 (d) This section applies whether the unused or abandoned water or a portion of the  
127 water is:  
128 (i) permitted to run to waste; or  
129 (ii) used by others without right with the knowledge of the water right holder.  
130 (e) This section does not apply to:  
131 (i) the use of water according to a lease or other agreement with the appropriator or the  
132 appropriator's successor in interest;  
133 (ii) a water right if its place of use is contracted under an approved state agreement or  
134 federal conservation fallowing program;  
135 (iii) those periods of time when a surface water or groundwater source fails to yield  
136 sufficient water to satisfy the water right;  
137 (iv) a water right when water is unavailable because of the water right's priority date;  
138 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with  
139 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:  
140 (A) the water is stored for present or future use; or  
141 (B) storage is limited by a safety, regulatory, or engineering restraint that the  
142 appropriator or the appropriator's successor in interest cannot reasonably correct;  
143 (vi) a water right if a water user has beneficially used substantially all of the water right  
144 within a seven-year period, provided that this exemption does not apply to the adjudication of a  
145 water right in a general determination of water rights under Chapter 4, Determination of Water  
146 Rights;  
147 (vii) except as provided by Subsection (2)(g), a water right:  
148 (A) (I) owned by a public water supplier;  
149 (II) represented by a public water supplier's ownership interest in a water company; or  
150 (III) to which a public water supplier owns the right of use; and  
151 (B) conserved or held for the reasonable future water requirement of the public, which

152 is determined according to Subsection (2)(f);

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

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

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

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

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

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

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

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

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

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

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

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

175 (iii) the quantity of water;

176 (iv) the period of use;

177 (v) the extension of time applied for;

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

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

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

182 (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse

183 from the application's filing date until the approved application's expiration date.

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

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

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

189 (ii) The notice shall:

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

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

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

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

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

199 (e) In any proceedings to determine whether the nonuse application should be approved  
200 or rejected, the state engineer shall follow the procedures and requirements of Title 63G,  
201 Chapter 4, Administrative Procedures Act.

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

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

206 (b) A reasonable cause for nonuse includes:

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

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

210 (iii) operation of legal proceedings;

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

213 (v) situations where, in the opinion of the state engineer, the nonuse would assist in

214 implementing an existing, approved water management plan; or

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

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

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

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

224 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

225 (1) There shall be a state engineer.

226 (2) The state engineer shall:

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

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

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

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

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

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

239 (a) reports of water right conveyances;

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

241 (c) dam construction and safety;

242 (d) the alteration of natural streams;

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

244 [~~(f)~~] (e) geothermal resource conservation; and



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

246           (5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah

247 Administrative Rulemaking Act, consistent with the purposes and provisions of this title,

248 governing:

249           (a) water distribution systems and water commissioners;

250           (b) water measurement and reporting;

251           (c) groundwater recharge and recovery;

252           (d) wastewater reuse;

253           (e) the form, content, and processing procedure for a claim under Section 73-5-13 to

254 surface or underground water that is not represented by a certificate of appropriation;

255           (f) the form and content of a proof submitted to the state engineer under Section

256 73-3-16;

257           ~~(d)~~ (g) the determination of water rights; ~~and~~ or

258           ~~(e)~~ (h) the form and content of applications and related documents, maps, and reports.

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

260           (a) enjoin the unlawful appropriation, diversion, and use of surface and underground

261 water without first seeking redress through the administrative process;

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

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

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

265           (7) The state engineer may:

266           (a) upon request from the board of trustees of an irrigation district under Title 17B,

267 Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited

268 Purpose Local Government Entities - Local Districts, or a special service district under Title

269 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a

270 water survey to be made of all lands proposed to be annexed to the district in order to

271 determine and allot the maximum amount of water that could be beneficially used on the land,

272 with a separate survey and allotment being made for each 40-acre or smaller tract in separate

273 ownership; and

274           (b) upon completion of the survey and allotment under Subsection (7)(a), file with the

275 district board a return of the survey and report of the allotment.

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

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

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

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

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

282 **73-2-22. Emergency flood powers -- Action to enforce orders -- Access rights to**  
283 **private and public property -- Injunctive relief against state engineer's decisions --**  
284 **Judicial review provisions not applicable.**

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

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

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

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

- 307           **73-3-12. Time limit on construction and application to beneficial use --**  
308 **Extensions -- Procedures and criteria.**
- 309           (1) As used in this section:
- 310           (a) "Public water supplier" is as defined in Section 73-1-4.
- 311           (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.
- 312           (2) (a) Within the time set by the state engineer under Subsection 73-3-10(5), an  
313 applicant shall:
- 314           (i) construct works, if necessary;
- 315           (ii) apply the water to beneficial use; and
- 316           (iii) file proof with the state engineer in accordance with Section 73-3-16.
- 317           (b) Except as provided by Subsection (4), the state engineer shall extend the time in  
318 which an applicant shall comply with Subsection (2)(a) if:
- 319           (i) the date set by the state engineer is not after 50 years from the day on which the  
320 application is approved; and
- 321           (ii) the applicant shows:
- 322           (A) reasonable and due diligence in completing the appropriation; or
- 323           (B) a reasonable cause for delay in completing the appropriation.
- 324           (c) An applicant shall file a request for an extension of time with the state engineer on  
325 or before the date set for filing proof.
- 326           (d) The state engineer may grant an extension of time authorized by Subsection (2)(b)  
327 if the state engineer sets a date:
- 328           (i) no later than 14 years from the day on which the application is approved if the  
329 applicant meets the requirements of Subsection (2)(b); and
- 330           (ii) after 14 years from the day on which the application is approved if:
- 331           (A) the applicant meets the requirements of Subsection (2)(b); and
- 332           (B) the state engineer publishes notice as provided in Subsection (2)(e).
- 333           (e) (i) The state engineer shall publish a notice of the request for an extension of time:
- 334           (A) once a week for two successive weeks, in a newspaper of general circulation, in the  
335 county:
- 336           (I) in which the water source is located; and
- 337           (II) where the water will be used; and

338 (B) in accordance with Section 45-1-101 for two weeks.  
339 (ii) The notice shall:  
340 (A) state that a request for an extension of time has been made; and  
341 (B) specify where an interested party may obtain additional information relating to the  
342 request.  
343 (f) A person who owns a water right or holds an application from the water source  
344 referred to in Subsection (2)(e) may file a protest with the state engineer:  
345 (i) within 20 days after the notice is published, if the adjudicative proceeding is  
346 informal; and  
347 (ii) within 30 days after the notice is published, if the adjudicative proceeding is  
348 formal.  
349 (g) The approved extension of time is effective so long as the applicant continues to  
350 exercise reasonable and due diligence in completing the appropriation.  
351 (h) The state engineer shall consider the holding of an approved application by a public  
352 water supplier or a wholesale electrical cooperative to meet the reasonable future water or  
353 electricity requirements of the public to be reasonable and due diligence in completing the  
354 appropriation for the purposes of this section for 50 years from the date on which the  
355 application is approved.  
356 (i) If the state engineer finds unreasonable delay or lack of reasonable and due  
357 diligence in completing the appropriation, the state engineer may:  
358 (i) deny the extension of time; or  
359 (ii) grant the request in part or upon conditions, including a reduction of the priority of  
360 all or part of the application.  
361 (3) Except as provided by Subsection (4), an application upon which proof has not  
362 been filed shall lapse and have no further force or effect after 50 years from the date on which  
363 the application is approved.  
364 (4) (a) If the works are constructed with which to make beneficial use of the water  
365 applied for, the state engineer may, upon showing of that fact, extend the time in which to file  
366 proof by setting a date after 50 years from the day on which the application is approved.  
367 (b) (i) The state engineer may extend the time in which the applicant shall comply with  
368 Subsection (2)(a) by setting a date after 50 years from the day on which the application is

369 approved if the applicant:

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

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

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

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

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

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

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

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

384 (ii) has:

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

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

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

388 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**  
389 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**  
390 **Statement in lieu of proof of appropriation or change.**

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

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

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

399 (a) a description of the works constructed;

400 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;

401 (c) the method of applying the water to beneficial use; and

402 (d) (i) detailed measurements of water put to beneficial use;

403 (ii) the date the measurements were made; and

404 (iii) the name of the person making the measurements.

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

412 (A) a statement indicating construction of the project works has been completed;

413 (B) a description of the major features with appropriate maps, profiles, drawings, and  
414 reservoir area-capacity curves;

415 (C) a description of the point or points of diversion and redirection;

416 (D) project operation data;

417 (E) a map showing the place of use of water and a statement of the purpose and method  
418 of use;

419 (F) the project plan for beneficial use of water under the applications and the quantity  
420 of water required; and

421 (G) a statement indicating what type of measuring devices have been installed.

422 (ii) The director of the Division of Water Resources shall sign proofs for the state  
423 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the  
424 federal projects specified in Subsection (4)(a).

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

428 (i) a description of the completed water storage facility;

429 (ii) a description of the major project features and appropriate maps, profiles, drawings,  
430 and reservoir area-capacity curves as required by the state engineer;

- 431 (iii) the quantity of water stored in acre-feet;  
432 (iv) a description of the water distribution facility for the delivery of the water; and  
433 (v) the project plan for beneficial use of water including any existing contracts for  
434 water delivery.

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

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

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

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

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

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

451 ~~[(8)]~~ (7) In those areas in which general determination proceedings are pending, or  
452 have been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state  
453 engineer may petition the district court for permission to:

- 454 (a) waive the requirements of this section and Section 73-3-17; and  
455 (b) permit each owner of an application to file a verified statement to the effect that the  
456 applicant has completed the appropriation or change and elects to file a statement of water  
457 users claim in the proposed determination of water rights or any supplement to it in accordance  
458 with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or  
459 proof of change.

460 ~~[(9)]~~ (8) This section does not apply to an instream flow water right authorized by  
461 Section 73-3-30.

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

463 **73-5-13. Claim to surface or underground water not otherwise represented --**  
464 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**  
465 **action to determine validity -- Rules.**

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

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

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

- 475 (i) the name and post office address of the person making the claim;
- 476 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,  
477 where appropriate;
- 478 (iii) the source of supply;
- 479 (iv) the priority date of the right;
- 480 (v) the location of the point of diversion with reference to a United States land survey  
481 corner;
- 482 (vi) the place of use;
- 483 (vii) the nature and extent of use;
- 484 (viii) the time during which the water has been used each year; and
- 485 (ix) the date when the water was first used.

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

- 489 (i) measurements of the amount of water diverted;
- 490 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per  
491 second is consistent with the beneficial use claimed and the supply which the source is capable  
492 of producing; and



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

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

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

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

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

507 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under  
508 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay  
509 the expenses of conducting a field investigation and publishing a notice of the claim, the state  
510 engineer shall:

- 511 (i) file the claim;
- 512 (ii) endorse the date of its receipt;
- 513 (iii) assign the claim a water right number; and
- 514 (iv) publish a notice of the claim following the same procedures as provided in Section  
515 73-3-6.

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

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

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

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

524 (b) The report of the investigation shall:  
525 (i) become part of the file on the claim; and  
526 (ii) be admissible in any administrative or judicial proceeding on the validity of the  
527 claim.

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 11-28-12 1:15 PM**

**Office of Legislative Research and General Counsel**