

1 **DIVISION OF WATER RIGHTS REVISIONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Margaret Dayton**

5 House Sponsor: Keith Grover

6

7 **LONG TITLE**

8 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

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

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **73-3-10**, as last amended by Laws of Utah 1997, Chapter 48

25 **73-3-18**, as last amended by Laws of Utah 2011, Chapter 86

26 **73-3-20**, as last amended by Laws of Utah 2012, Chapter 163

27 **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136



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

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

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

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

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

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

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

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

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

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

(c) perfect the proposed application.

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

(a) the work proposed in the application; or

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

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

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

(a) the construction work must be completed; and

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

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

73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities --

59 **Assignment of application -- Filing and recording -- Constructive notice -- Effect of**
60 **failure to record.**

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

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

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

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

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

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

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

80 (6) An instrument transferring or assigning a right described in Subsection (5), when
81 acknowledged or proved and certified in the manner provided by law for the acknowledgment
82 or proving of conveyances of real estate, may be filed in the office of the state engineer and
83 shall from time of filing impart notice to all persons of the contents thereof.

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

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

90 **73-3-20. Right to divert appropriated waters into natural streams --**
91 **Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse**
92 **of application.**

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

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

- 108 (i) information about the diverting works constructed;
- 109 (ii) information about the extent to which the development under the exchange has
110 occurred; or
- 111 (iii) other information the state engineer considers necessary to:
 - 112 (A) ensure that the exchange is taking place;
 - 113 (B) establish that the owner still has a legal interest in the underlying water right used
114 as the basis for the exchange; or
 - 115 (C) determine the quantity of water being exchanged.

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

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

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

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

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

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

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

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

132 (ii) the exchange application is for a small amount of water, as defined in Section
133 73-3-5.6;

134 (iii) the applicant demonstrates that, before the exchange application lapsed, the
135 applicant or the applicant's predecessor in interest, in accordance with the exchange
136 application:

137 (A) constructed and occupied a residence; and

138 (B) beneficially used the water at the residence; and

139 (iv) the applicant demonstrates that none of the conditions described in Subsection (3)
140 for lapsing an approved exchange application still exist.

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

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

145 **73-5-13. Claim to surface or underground water not otherwise represented --**
146 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**
147 **action to determine validity -- Rules.**

148 (1) (a) [~~All claimants~~] A claimant to the right to the use of water, including both
149 surface and underground water, whose [~~rights are~~] right is not represented by [~~certificates~~] a
150 certificate of appropriation issued by the state engineer, by [~~applications~~] an application filed
151 with the state engineer, by [~~court decrees~~] a court decree, or by a notice of claim filed pursuant

152 to law, shall submit the claim to the state engineer in accordance with this section.

153 (b) Subsections (2) through (7) ~~shall~~ only apply to claims or corrected claims
154 submitted to the state engineer ~~[pursuant to]~~ in accordance with this section on or after May ~~[4,~~
155 ~~1997]~~ 14, 2013.

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

- 160 (i) the name and ~~[post-office]~~ mailing address of the person making the claim;
- 161 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,
162 where appropriate;
- 163 (iii) the source of supply;
- 164 (iv) the priority date of the right;
- 165 (v) the location of the point of diversion with reference to a United States land survey
166 corner;
- 167 (vi) the place of use;
- 168 (vii) the nature and extent of use;
- 169 (viii) the time during which the water has been used each year; and
- 170 (ix) the date when the water was first used.

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

- 173 (i) measurements of the amount of water diverted;
- 174 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per
175 second is consistent with the beneficial use claimed and the supply ~~[which]~~ that the source is
176 capable of producing; and
- 177 (iii) a map showing the original diversion and conveyance works and where the water
178 was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial
179 use.

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

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

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

184 (iii) authenticated copies of original diaries, personal histories, or other historical

185 documents [~~which~~] that document the claimed use of water; and

186 (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's

187 office.

188 [~~(3) (a) A claim may be corrected by submitting to the state engineer a verified~~

189 ~~corrected claim designated as such and bearing the same number as the original claim.]~~

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

191 (3) (a) A claimant, or a claimant's successor in interest, as shown in the records of the

192 state engineer may file a corrected claim that:

193 (i) is designated as a corrected claim;

194 (ii) includes the information described in Subsection (2); and

195 (iii) bears the same number as the original claim.

196 (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is

197 filed before the state engineer publishes the original claim in accordance with Subsection

198 (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.

199 (c) The state engineer shall treat a corrected claim that is filed in accordance with

200 Subsection (3)(a) as if the corrected claim were the original claim.

201 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under

202 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay

203 the expenses of conducting a field investigation and publishing a notice of the claim, the state

204 engineer shall:

205 (i) file the claim;

206 (ii) endorse the date of its receipt;

207 (iii) assign the claim a water right number; and

208 (iv) publish a notice of the claim following the same procedures as provided in Section

209 73-3-6.

210 (b) Any claim not acceptably complete under Subsection (2) shall be returned to the

211 claimant.

212 (c) The acceptance of any claim filed under this section by the state engineer may not

213 be considered to be an adjudication by the state engineer of the validity of the claimed water

214 right.

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

216 (i) conduct a field investigation of each claim filed; and

217 (ii) prepare a report of the investigation.

218 (b) The report of the investigation shall:

219 (i) become part of the file on the claim; and

220 (ii) be admissible in any administrative or judicial proceeding ~~[on]~~ regarding the
221 validity of the claim.

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

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

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

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

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

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

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

245 (7) (a) In a general adjudication of water rights under Title 73, Chapter 4,
246 Determination of Water Rights, after completion of final summons in accordance with Section
247 73-4-22, a district court may, by decree, prohibit future claims from being filed under this
248 section in the general adjudication area.

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

252 ~~(7)~~ (8) The state engineer may make rules consistent with this section specifying
253 information required to be included in a claim and claim procedures.

Legislative Review Note
as of 2-1-13 7:53 AM

Office of Legislative Research and General Counsel