

**WATER LAW AMENDMENTS -- DILIGENCE CLAIMS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: Michael E. Noel

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to certain claims for water rights.

**Highlighted Provisions:**

This bill:

▶ requires the state engineer to include an evaluation of an asserted beneficial use in the report of a field investigation for a diligence claim; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**73-5-13**, as last amended by Laws of Utah 2013, Chapters 221, 343, 429 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 429

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

Section 1. Section **73-5-13** is amended to read:

**73-5-13. Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**



28 **action to determine validity -- Rules.**

29 (1) (a) A claimant to the right to the use of water, including both surface and  
30 underground water, whose right is not represented by a certificate of appropriation issued by  
31 the state engineer, by an application filed with the state engineer, by a court decree, or by a  
32 notice of claim filed pursuant to law, shall submit the claim to the state engineer in accordance  
33 with this section.

34 (b) Subsections (2) through (7) only apply to claims or corrected claims submitted to  
35 the state engineer in accordance with this section on or after May 14, 2013.

36 (2) (a) A claim submitted under this section shall be verified under oath by the claimant  
37 or the claimant's duly appointed representative and submitted on forms provided by the state  
38 engineer setting forth any information the state engineer requires, including:

- 39 (i) the name and mailing address of the person making the claim;
- 40 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,  
41 where appropriate;
- 42 (iii) the source of supply;
- 43 (iv) the priority date of the right;
- 44 (v) the location of the point of diversion with reference to a United States land survey  
45 corner;
- 46 (vi) the place of use;
- 47 (vii) the nature and extent of use;
- 48 (viii) the time during which the water has been used each year; and
- 49 (ix) the date when the water was first used.

50 (b) The claim shall also include the following information, prepared by a Utah licensed  
51 engineer or a Utah licensed land surveyor:

- 52 (i) measurements of the amount of water diverted;
- 53 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per  
54 second is consistent with the beneficial use claimed and the supply that the source is capable of  
55 producing; and
- 56 (iii) a map showing the original diversion and conveyance works and where the water  
57 was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial  
58 use.

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

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

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

- 69 (i) is designated as a corrected claim;
- 70 (ii) includes the information described in Subsection (2); and
- 71 (iii) bears the same number as the original claim.

72 (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is  
73 filed before the state engineer publishes the original claim in accordance with Subsection  
74 (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.

75 (c) The state engineer shall treat a corrected claim that is filed in accordance with  
76 Subsection (3)(a) as if the corrected claim were the original claim.

77 (4) (a) When a claimant submits a claim that is acceptably complete under Subsection  
78 (2) and deposits money with the state engineer sufficient to pay the expenses of conducting a  
79 field investigation and publishing a notice of the claim, the state engineer shall:

- 80 (i) file the claim;
- 81 (ii) endorse the date of its receipt;
- 82 (iii) assign the claim a water right number;
- 83 (iv) publish a notice of the claim following the same procedures as provided in Section  
84 [73-3-6](#); and

85 (v) if the claimant is the federal government or a federal agency, provide a copy of the  
86 claim to the members of the Natural Resources, Agriculture, and Environment Interim  
87 Committee.

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

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

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

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

95 (ii) prepare a report of the investigation.

96 (b) In preparing the report of the investigation described in Subsection (5)(a), the state  
97 engineer shall:

98 (i) apply Section 73-1-3; and

99 (ii) include an evaluation of the asserted beneficial uses as they existed at the time of  
100 the claimed priority date, specifically identifying any portion of the claim that was not placed to  
101 beneficial use in accordance with law.

102 [~~(b)~~] (c) The report of the investigation shall:

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

104 (ii) be admissible in any administrative or judicial proceeding regarding the validity of  
105 the claim.

106 (6) (a) Any person who may be damaged by a diversion and use of water as described  
107 in a claim submitted pursuant to this section may file an action in district court to determine the  
108 validity of the claim, regardless of whether the state engineer has filed the claim in accordance  
109 with Subsection (4)(a).

110 (b) Venue for an action brought under Subsection (6)(a) shall be in the county where  
111 the point of diversion listed in the claim is located, or in a county where the place of use, or  
112 some part of it, is located.

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

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

118 (e) (i) A person filing an action challenging the validity of a claim to the use of water  
119 under this section shall notify the state engineer of the pendency of the action in accordance  
120 with state engineer rules.

121 (ii) Upon receipt of the notice, the state engineer may take no action on any change or  
122 exchange applications founded on the claim that is the subject of the pending litigation until the  
123 court adjudicates the matter.

124 (f) Upon the entering of any final order or decree in a judicial action to determine the  
125 validity of a claim under this section, the prevailing party shall file a certified copy of the order  
126 or decree with the state engineer, who shall incorporate the order into the state engineer's file  
127 on the claim.

128 (7) (a) In a general adjudication of water rights under Title 73, Chapter 4,  
129 Determination of Water Rights, after completion of final summons in accordance with Section  
130 [73-4-22](#), a district court may, by decree, prohibit future claims from being filed under this  
131 section in the general adjudication area, division, or subdivision.

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

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**