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1 WATER LAW AMENDMENTS -- DILIGENCE CLAIMS

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Margaret Dayton**

5 House Sponsor: Michael E. Noel

7 LONG TITLE**8 General Description:**

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

10 Highlighted Provisions:

11 This bill:

- 12 ▶ requires the state engineer to include an evaluation of an asserted beneficial use in
-
- 13 the report of a field investigation for a diligence claim; and
-
- 14 ▶ makes technical changes.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

19 Utah Code Sections Affected:

20 AMENDS:

21 **73-5-13**, as last amended by Laws of Utah 2013, Chapters 221, 343, 429 and last
22 amended by Coordination Clause, Laws of Utah 2013, Chapter 429

24 Be it enacted by the Legislature of the state of Utah:25 Section 1. Section **73-5-13** is amended to read:26 **73-5-13. Claim to surface or underground water not otherwise represented --**
27 **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.

Legislative Review Note
Office of Legislative Research and General Counsel