

**WATER RIGHTS ADJUDICATION AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: Scott D. Sandall

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**LONG TITLE**

**General Description:**

This bill deals with the procedure for filing a claim for the right to use water.

**Highlighted Provisions:**

This bill:

- ▶ states that if the state engineer receives an untimely statement of claim, the state engineer shall return the claim to the claimant without further action;
- ▶ authorizes the state engineer to prepare and file an addendum to a proposed determination, under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 73-4-9**, as last amended by Laws of Utah 2016, Chapter 72
- 73-4-11**, as last amended by Laws of Utah 2016, Chapter 72
- 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



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

29 Section 1. Section **73-4-9** is amended to read:

30 **73-4-9. Failure to file a statement of claim.**

31 (1) The filing of each statement of claim shall be considered notice to all persons of the  
32 claim of the party making the same, and failing to make and deliver such statement of claim to  
33 the state engineer or the district court within the time prescribed by Section **73-4-5**, or as  
34 extended pursuant to Section **73-4-10**, shall be considered evidence of an intent to abandon the  
35 right.

36 (2) If a claimant fails to timely file a statement of claim, as provided in this chapter, for  
37 a right not of record in the state engineer's office, the claimant is forever barred and estopped  
38 from subsequently asserting the unclaimed right.

39 (3) If the state engineer receives an untimely statement of claim, the state engineer  
40 shall return the claim to the claimant without further action.

41 (4) If an untimely statement of claim is filed with the court, the state engineer shall take  
42 no further action unless a claimant's failure to file a timely claim is excused pursuant to  
43 Subsection **73-4-9.5(3)**.

44 (5) Subsections (3) and (4) apply whether the untimely claim is asserted pursuant to  
45 Section **73-4-5** or **73-5-13**.

46 Section 2. Section **73-4-11** is amended to read:

47 **73-4-11. Proposed determination by engineer to court -- Hydrographic survey**  
48 **map -- Notice -- Public meeting.**

49 (1) After full consideration of the statements of claims, records, and files, and after an  
50 examination of the river system or water source involved, the state engineer shall for the  
51 general adjudication area, division, or subdivision:

52 (a) complete a hydrographic survey map;

53 (b) prepare a proposed determination of all rights to the use of the water and file it with  
54 the district court;

55 (c) serve notice of completion of the proposed determination by publication and by  
56 mail, in accordance with Subsection **73-4-3(5)**, to each claimant of record in the state  
57 engineer's office within the general adjudication area, division, or subdivision, that includes:

58 (i) (A) a copy of the proposed determination; or

59 (B) instructions on how to obtain or access an electronic copy of the proposed  
60 determination; and

61 (ii) a statement describing the claimant's right to file an objection to the proposed  
62 determination within 90 days after the day on which the notice of completion of the proposed  
63 determination is served; and

64 (d) hold a public meeting in the area, division, or subdivision covered by the proposed  
65 determination to explain the proposed determination to the claimants.

66 (2) A claimant who desires to object to the state engineer's proposed determination  
67 shall, within 90 days after the day on which the state engineer served the claimant with notice  
68 of completion of the proposed determination, file a written objection to the proposed  
69 determination with the district court.

70 (3) The state engineer shall distribute the waters from the natural streams or other  
71 natural sources:

72 (a) in accordance with the proposed determination or modification to the proposed  
73 determination by court order until a final decree is rendered by the court; or

74 (b) if the right to the use of the waters has been decreed or adjudicated, in accordance  
75 with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

76 (4) Following the proposed determination, the state engineer may prepare and file one  
77 or more addenda to one or more proposed determinations, provided the state engineer:

78 (a) files the addendum with the court;

79 (b) in the preamble, provides an explanation of the issues addressed in the addendum;

80 (c) serves the addendum, in the same manner as provided in Subsection (1)(c), on each  
81 owner of record, according to the state engineer's records, of a perfected water right authorizing  
82 the diversion of water from within the area, division, or subdivision covered by the addendum;  
83 and

84 (d) holds a public meeting in the same manner as provided in Subsection (1)(d).

85 Section 3. Section 73-5-13 is amended to read:

86 **73-5-13. Claim to surface or underground water not otherwise represented --**  
87 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**  
88 **action to determine validity -- Rules.**

89 (1) (a) A claimant to the right to the use of water, including both surface and

90 underground water, whose right is not represented by a certificate of appropriation issued by  
91 the state engineer, by an application filed with the state engineer, by a court decree, or by a  
92 notice of claim filed pursuant to law, shall submit the claim to the state engineer in accordance  
93 with this section.

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

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

99 (i) the name and mailing address of the person making the claim;

100 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,  
101 where appropriate;

102 (iii) the source of supply;

103 (iv) the priority date of the right;

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

106 (vi) the place of use;

107 (vii) the nature and extent of use;

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

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

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

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

113 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per  
114 second is consistent with the beneficial use claimed and the supply that the source is capable of  
115 producing; and

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

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

- 121 (i) affidavits setting forth facts of which the affiant has personal knowledge;  
122 (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;  
123 (iii) authenticated copies of original diaries, personal histories, or other historical  
124 documents that document the claimed use of water; and  
125 (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's  
126 office.
- 127 (3) (a) A claimant, or a claimant's successor in interest, as shown in the records of the  
128 state engineer may file a corrected claim that:
- 129 (i) is designated as a corrected claim;  
130 (ii) includes the information described in Subsection (2); and  
131 (iii) bears the same number as the original claim.
- 132 (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is  
133 filed before the state engineer publishes the original claim in accordance with Subsection  
134 (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.
- 135 (c) The state engineer shall treat a corrected claim that is filed in accordance with  
136 Subsection (3)(a) as if the corrected claim were the original claim.
- 137 (4) (a) When a claimant submits a claim that is acceptably complete under Subsection  
138 (2) and deposits money with the state engineer sufficient to pay the expenses of conducting a  
139 field investigation and publishing a notice of the claim, the state engineer shall:
- 140 (i) file the claim;  
141 (ii) endorse the date of its receipt;  
142 (iii) assign the claim a water right number;  
143 (iv) publish a notice of the claim following the same procedures as provided in Section  
144 [73-3-6](#); and  
145 (v) if the claimant is the federal government or a federal agency, provide a copy of the  
146 claim to the members of the Natural Resources, Agriculture, and Environment Interim  
147 Committee.
- 148 (b) Any claim not acceptably complete under Subsection (2) shall be returned to the  
149 claimant.
- 150 (c) The acceptance of any claim filed under this section by the state engineer may not  
151 be considered to be an adjudication by the state engineer of the validity of the claimed water

152 right.

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

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

155 (ii) prepare a report of the investigation.

156 (b) The report of the investigation shall:

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

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

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

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

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

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

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

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

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

182 (7) (a) In a general adjudication of water rights under Title 73, Chapter 4,

183 Determination of Water Rights, after completion of final summons in accordance with Section  
184 73-4-22, a district court may, by decree, prohibit future claims from being filed under this  
185 section in the general adjudication area, division, or subdivision.

186 ~~[(b) If the state engineer receives a claim for an area where a court has prohibited filing~~  
187 ~~under Subsection (7)(a), the state engineer shall return the claim to the claimant without further~~  
188 ~~action.]~~

189 (b) If the state engineer receives a claim for an area where a court has prohibited filing  
190 under Subsection (7)(a) or Section 73-4-9.5, or the claim is untimely as provided in Section  
191 73-4-5, the state engineer shall return the claim to the claimant without further action.

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