

SB0061S01 compared with SB0061

~~deleted text~~ shows text that was in SB0061 but was deleted in SB0061S01.

Inserted text shows text that was not in SB0061 but was inserted into SB0061S01.

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Senator Margaret Dayton proposes the following substitute bill:

WATER RIGHTS ADJUDICATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies the summons for a general adjudication of a water right;
- ▶ 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

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

73-4-4. Summons for general adjudication of water rights -- Requirements to serve summons individually and generally -- Statement of claim requirement.

(1) (a) The state engineer shall, by mail, serve a summons to a claimant of record in the state engineer's office within a general adjudication area, division, or subdivision.

(b) (i) The state engineer may serve, by publication, a general summons to claimants in a general adjudication area, division, or subdivision, who are not of record in the state engineer's office, if the state engineer files an affidavit with the district court, verifying that the state engineer has, in accordance with Section 73-4-3, searched the records of the state engineer's office for claimants in the general adjudication area, division, or subdivision.

(ii) The state engineer shall publish, in accordance with the Utah Rules of Civil Procedure, a general summons described in Subsection (1)(b)(i):

(A) once a week for five successive weeks in one or more newspapers, determined by the judge of the district court as most likely to give notice to the claimants served; and

(B) for five weeks, in accordance with Section 45-1-101.

(iii) Service of a general summons is completed upon the last required date of publication.

(c) The summons shall be substantially in the following form:

"In the District Court of County, State of Utah, in the matter of the general adjudication of water rights in the described water source.

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SUMMONS

The State of Utah to the said defendant:

You are hereby summoned ~~[to appear and defend]~~ in the above entitled action which is brought for the purpose of making a general determination of the water rights of the described water source. Upon the service of this summons upon you, you will thereafter be subject to the jurisdiction of the entitled court and if you have or intend to claim a water right, it shall be your duty to follow further proceedings in the above entitled action and to defend and protect your water rights therein. The state engineer will give a further notice sent to your last-known address, that you must file a statement of claim in this action setting forth the nature of your claim, and said notice will specify the date upon which your statement of claim is due and thereafter you must file said claim within the time set and your failure so to do will constitute a default in the premises and a judgment may be entered against you declaring that you have no right to the use of water not claimed."

(2) If the state engineer is required, under this section, to serve a summons on the United States, the state engineer shall serve the summons in accordance with federal law.

Section ~~73-4-2~~ 73-4-9. Section ~~73-4-9~~ is amended to read:

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

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

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

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

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

(5) Subsections (3) and (4) apply whether the untimely claim is asserted pursuant to

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Section 73-4-5 or 73-5-13.

Section ~~{2}~~3. Section 73-4-11 is amended to read:

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

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

(a) complete a hydrographic survey map;

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

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

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

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

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

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

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

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

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

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

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

(a) files the addendum with the court;

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

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

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

Section ~~73-4~~4. 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 action to determine validity -- Rules.

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

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

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

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

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

(iii) the source of supply;

(iv) the priority date of the right;

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

(vi) the place of use;

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- (vii) the nature and extent of use;
- (viii) the time during which the water has been used each year; and
- (ix) the date when the water was first used.

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

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

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

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

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

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

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

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

(4) (a) When a claimant submits a claim that is acceptably complete under Subsection

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(2) and deposits money with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:

- (i) file the claim;
- (ii) endorse the date of its receipt;
- (iii) assign the claim a water right number;
- (iv) publish a notice of the claim following the same procedures as provided in Section

73-3-6; and

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

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

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

(5) (a) The state engineer shall:

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

(b) The report of the investigation shall:

- (i) become part of the file on the claim; and
- (ii) be admissible in any administrative or judicial proceeding regarding the validity of the claim.

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

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

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

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

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

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

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

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

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

(b) If the state engineer receives a claim for an area where a court has prohibited filing under Subsection (7)(a) or Section 73-4-9.5, or the claim is untimely as provided in Section 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~~