

WATER GENERAL ADJUDICATION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel Ferry

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill enacts and amends provisions relating to water rights.

Highlighted Provisions:

This bill:

- ▶ enacts and amends provisions related to an application to appropriate or permanently change a small amount of water;
 - ▶ enacts and amends provisions related to a right to appeal during a general adjudication of water rights;
 - ▶ enacts and amends provisions related to the state engineer's duty to search records for and serve summons on claimants during a general adjudication of water rights;
- and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-5.6, as last amended by Laws of Utah 2009, Chapter 367

73-4-16, as last amended by Laws of Utah 2016, Chapter 72



28 [73-4-22](#), as last amended by Laws of Utah 2016, Chapter 72



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

31 Section 1. Section [73-3-5.6](#) is amended to read:

32 **[73-3-5.6. Applications to appropriate or permanently change a small amount of](#)**
33 **[water -- Proof of appropriation or change.](#)**

34 (1) As used in this section:

35 (a) "Application" means an application to:

36 (i) appropriate a small amount of water; or

37 (ii) permanently change a small amount of water.

38 (b) "Livestock water right" means a right for:

39 (i) livestock to consume water:

40 (A) directly from the water source; or

41 (B) from an impoundment into which the water is diverted; and

42 (ii) associated uses of water related to the raising and care of livestock.

43 (c) "Proof" means proof of:

44 (i) appropriation; or

45 (ii) permanent change.

46 (d) "Small amount of water" means the amount of water necessary to meet the
47 requirements of:

48 (i) one residence;

49 (ii) 1/4 acre of irrigable land; and

50 (iii) a livestock watering right for:

51 (A) 10 cattle; or

52 (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than
53 cattle.

54 (2) The state engineer may approve an application if:

55 (a) the state engineer undertakes a thorough investigation of the application;

56 (b) notice is provided in accordance with Subsection (3);

57 (c) the application complies with the state engineer's regional policies and restrictions

58 and Section [73-3-3](#) or [73-3-8](#), as applicable; and

59 (d) the application does not conflict with a political subdivision's ordinance:

60 (i) for planning, zoning, or subdivision regulation; or

61 (ii) under Section 10-8-15.

62 (3) (a) Advertising of an application specified in Subsection (2) is at the discretion of
63 the state engineer.

64 (b) If the state engineer finds that the uses proposed by the application may impair
65 other rights, before approving the application, the state engineer shall give notice of the
66 application according to Section 73-3-6.

67 (4) An applicant receiving approval under this section is responsible for the time limit
68 for construction and submitting proof as required by Subsection (6).

69 (5) Sixty days before the end of the time limit for construction, the state engineer shall
70 notify the applicant by mail when proof is due.

71 (6) (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate
72 under Section 73-3-17 if ~~[an applicant files an affidavit, on a form provided by the state
73 engineer, as proof.]~~, as proof, the applicant files an affidavit:

74 ~~[(b) The affidavit shall:]~~

75 ~~[(i) specify the amount of:]~~

76 ~~[(A) irrigated land; and]~~

77 ~~[(B) livestock watered; and]~~

78 ~~[(ii) declare the residence is constructed and occupied:]~~

79 (i) on a form provided by the state engineer;

80 (ii) that specifies the amount of:

81 (A) irrigated land; and

82 (B) livestock watered; and

83 (iii) that declares the residence is constructed and occupied.

84 ~~[(c)]~~ (b) The form provided by the state engineer under Subsection (6)(a) may require
85 the information the state engineer determines is necessary to maintain accurate records
86 regarding the point of diversion and place of use.

87 (7) If an applicant does not file the proof required by Subsection (6) by the day on
88 which the time limit for construction ends, the application lapses under Section 73-3-18.

89 (8) (a) ~~[An]~~ Except as provided in Subsections (9) and (10), an applicant whose

90 application lapses may file a request with the state engineer to reinstate the application, if the
91 applicant demonstrates that the applicant or the applicant's predecessor in interest:

- 92 (i) constructed and occupied a residence within the time limit for construction; and
- 93 (ii) beneficially uses the water.

94 (b) ~~[H]~~ Except as provided in Subsection (10), if an applicant meets the requirements
95 of Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer
96 shall issue a certificate[-] for the beneficial uses the applicant attests to in an affidavit described
97 in Subsection (6).

98 ~~[(i) for the amount of water actually in use as described in the affidavit; and]~~

99 ~~[(ii) with a priority date of the day on which the applicant files the request for~~
100 ~~reinstatement of the application.]~~

101 (9) For an application related to the use of water located within an area where general
102 determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are
103 pending or concluded, an applicant whose application lapses may not file a request for
104 reinstatement with the state engineer if:

105 (a) the application lapsed before the state engineer issued notice of the time to file a
106 statement of water users claim under Section 73-4-3; and

107 (b) the applicant failed to timely submit a statement of claim as described in
108 Subsection (10)(c)(ii).

109 (10) For an application related to the use of water located within an area where general
110 determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are
111 pending, the state engineer shall allow a reinstatement request under Subsection (8)(a) and,
112 instead of issuing a certificate, evaluate the reinstatement request and statement of claim as part
113 of the general adjudication for the area, if:

114 (a) the application lapsed before the state engineer issued notice of the time to file a
115 statement of water users claim under Section 73-4-3;

116 (b) the applicant files the request for reinstatement no more than 90 days after the day
117 on which the state engineer issues the notice of the time to file statements of claim in
118 accordance with Section 73-4-3; and

119 (c) the applicant files:

120 (i) an affidavit described in Subsection (6); and

121 (ii) a timely statement of claim under Section 73-4-5.

122 (11) The priority date for an application reinstated under this section is the day on
123 which the applicant files the request for reinstatement of the application.

124 Section 2. Section **73-4-16** is amended to read:

125 **73-4-16. Appeals.**

126 (1) There ~~[shall be]~~ is a right of appeal from a final judgment of the district court to the
127 Supreme Court as provided in Section **78A-3-102**.

128 (2) (a) There is a right of appeal to the Supreme Court from a district court order,
129 judgment, or decree that resolves an objection filed in accordance with Section 73-4-9.5 or
130 73-4-11.

131 (b) The entry of a decree for a general adjudication area, division, or subdivision
132 described in Section 73-4-1 is not a prerequisite to exercise the right to appeal described in
133 Subsection (2)(a).

134 ~~[(2)]~~ (3) The appeal shall be upon the record made in the district court, and may as in
135 equity cases be on questions of both law and fact.

136 Section 3. Section **73-4-22** is amended to read:

137 **73-4-22. State engineer's duty to search records for and serve summons on**
138 **claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown**
139 **claimants.**

140 (1) The state engineer, throughout the pendency of proceedings, shall serve summons
141 in the manner prescribed by Section **73-4-4** upon all claimants to the use of water in the
142 described source embraced by said action, whenever the names and addresses of said persons
143 come to the attention of the state engineer.

144 (2) Immediately after the notice of the ~~[proposed determination]~~ list of unclaimed
145 rights of record is given, in accordance with Section ~~[73-4-11]~~ 73-4-9.5 hereof, the state
146 engineer shall diligently search for the names and addresses of any claimants to water in the
147 source covered by the ~~[proposed determination]~~ general adjudication area, division, or
148 subdivision who have not been previously served with summons other than by publication, and
149 shall serve summons on any such persons located ~~[shall forthwith be served with summons]~~.

150 (3) (a) After the state engineer has exhausted the search for other claimants, as
151 described in Subsection (2), the state engineer shall:

152 ~~[(a)]~~ (i) make such fact known to the district court by affidavit; and

153 ~~[(b)]~~ (ii) ~~[as ordered by the court, again]~~ in accordance with Subsection (3)(b), publish
154 summons five times, once each week, for five successive weeks ~~[which said service shall be~~
155 ~~binding upon all unknown claimants]~~.

156 (b) A summons described in Subsection (3)(a)(ii) shall be substantially in the following
157 form:

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

160 SUMMONS

161 The State of Utah to the said defendant:

162 You are hereby summoned in the above entitled action, which is brought for the
163 purpose of making a general determination of the water rights of the described water source.
164 Upon the service of this summons on you, you will thereafter be subject to the jurisdiction of
165 the entitled court and, if you have or intend to claim a water right, it shall be your duty to
166 follow further proceedings in the above entitled action and to defend and protect your water
167 rights therein. If you have not been served with summons other than by publication in a
168 newspaper and you claim a water right for which you have not previously filed a statement of
169 claim, you must file a statement of claim in accordance with Section [73-4-5](#) in this action
170 setting forth the nature of your claim within 90 days after the last date of publication of this
171 summons. Your failure to do so will constitute a default in the premises and a judgment may be
172 entered against you declaring and adjudging that you have forfeited all rights to the use of
173 water within the described water source and that you are forever barred and estopped from
174 subsequently asserting any right to the use of water not claimed."

175 (4) An unknown claimant who has not been served with a summons other than by
176 publication in a newspaper and has or intends to claim a water right, shall file a statement of
177 claim in accordance with Section [73-4-5](#) within 90 days after the last day on which a summons
178 is published as described in Subsection (3)(a)(ii).

179 (5) Service of the published summons described in Subsection (3)(a)(ii) is binding on
180 all unknown claimants.