

1 **GENERAL ADJUDICATION WATER AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Casey Snider**

5 Senate Sponsor: Scott D. Sandall

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses adjudication of claims to water.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses objections to state engineer determinations;
- 13 ▶ prohibits claims after completion of a final summons; 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 **73-4-11**, as last amended by Laws of Utah 2018, Chapter 348

22 **73-5-13**, as last amended by Laws of Utah 2018, Chapters 346 and 348

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

25 Section 1. Section **73-4-11** is amended to read:

26 **73-4-11. Proposed determination by engineer to court -- Hydrographic survey**
27 **map -- Notice -- Public meeting.**

28 (1) After full consideration of the statements of claims, records, and files, and after an
29 examination of the river system or water source involved, the state engineer shall for the

30 general adjudication area, division, or subdivision:

31 (a) complete a hydrographic survey map;

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

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

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

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

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

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

45 (2) A claimant who desires to object to the state engineer's proposed determination or
46 an addendum to a proposed determination shall, within 90 days after the day on which the state
47 engineer served the claimant with notice of completion of the proposed determination, file [a
48 ~~written objection to the proposed determination with the district court.~~] with the district court a
49 short and plain written:

50 (a) statement showing that the claimant is entitled to relief, identifying the elements of
51 the proposed determination to which the claimant objects; and

52 (b) demand for relief.

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

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

57 (b) if the right to the use of the waters has been decreed or adjudicated, in accordance

58 with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

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

61 (a) files the addendum with the court;

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

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

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

68 Section 2. Section **73-5-13** is amended to read:

69 **73-5-13. Claim to surface or underground water not otherwise represented --**
70 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**
71 **action to determine validity -- Rules.**

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

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

79 (2) (a) [A] The claimant or the claimant's appointed representative shall verify under
80 oath a claim submitted under this section [shall be verified under oath by the claimant or the
81 claimant's duly appointed representative and submitted on forms] and submit the claim on
82 forms provided by the state engineer setting forth any information the state engineer requires,
83 including:

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

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

86 where appropriate;

87 (iii) the source of supply;

88 (iv) the priority date of the right;

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

91 (vi) the place of use;

92 (vii) the nature and extent of use;

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

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

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

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

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

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

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

106 (i) affidavits setting forth facts of which the affiant has personal knowledge;

107 (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;

108 (iii) authenticated copies of original diaries, personal histories, or other historical
109 documents that document the claimed use of water; and

110 (iv) other relevant records on file with ~~[any]~~ a county recorder's, surveyor's, or
111 assessor's office.

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

- 114 (i) is designated as a corrected claim;
- 115 (ii) includes the information described in Subsection (2); and
- 116 (iii) bears the same number as the original claim.
- 117 (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is
- 118 filed before the state engineer publishes the original claim in accordance with Subsection
- 119 (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.
- 120 (c) The state engineer shall treat a corrected claim that is filed in accordance with
- 121 Subsection (3)(a) as if the corrected claim were the original claim.
- 122 (4) (a) When a claimant submits a claim that is acceptably complete under Subsection
- 123 (2) and deposits money with the state engineer sufficient to pay the expenses of conducting a
- 124 field investigation and publishing a notice of the claim, the state engineer shall:
- 125 (i) file the claim;
- 126 (ii) endorse the date of [~~its~~] the claim's receipt;
- 127 (iii) assign the claim a water right number;
- 128 (iv) publish a notice of the claim following the same procedures as provided in Section
- 129 [73-3-6](#); and
- 130 (v) if the claimant is the federal government or a federal agency, provide a copy of the
- 131 claim to the members of the Natural Resources, Agriculture, and Environment Interim
- 132 Committee.
- 133 (b) [~~Any~~] A claim not acceptably complete under Subsection (2) shall be returned to
- 134 the claimant.
- 135 (c) The acceptance of [~~any~~] a claim filed under this section by the state engineer may
- 136 not be considered to be an adjudication by the state engineer of the validity of the claimed
- 137 water right.
- 138 (5) (a) The state engineer shall:
- 139 (i) conduct a field investigation of each claim filed; and
- 140 (ii) prepare a report of the investigation.
- 141 (b) In preparing the report of the investigation described in Subsection (5)(a), the state

142 engineer shall:

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

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

147 (c) The report of the investigation shall:

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

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

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

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

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

160 (d) In ~~[any]~~ an action brought to determine the validity of a claim to the use of water
161 under this section, the claimant ~~[shall have]~~ has the initial burden of proof as to the validity of
162 the claimed right.

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

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

169 (f) Upon the entering of ~~[any]~~ a final order or decree in a judicial action to determine

170 the validity of a claim under this section, the prevailing party shall file a certified copy of the
171 order or decree with the state engineer, who shall incorporate the order into the state engineer's
172 file on the claim.

173 (7) (a) In a general adjudication of water rights under Title 73, Chapter 4,
174 Determination of Water Rights, after completion of final summons in accordance with Section
175 ~~73-4-22, [a district court may, by decree, prohibit future claims from being filed]~~ a claimant is
176 prohibited from filing a claim under this section in the general adjudication area, division, or
177 subdivision.

178 (b) ~~[H]~~ The state engineer shall return a claim filed under this section to a claimant
179 without further action if:

180 (i) the state engineer receives a claim for an area where ~~[a court has]~~ the claimant is
181 prohibited from filing the claim under Subsection (7)(a) or Section ~~73-4-9.5~~^{73-4-9.5}; or

182 (ii) the claim is untimely as provided in Section ~~[73-4-5, the state engineer shall return~~
183 ~~the claim to the claimant without further action]~~ 73-4-9.