

**WATER RELATED PROCESS AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

House Sponsor: Keven J. Stratton

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**LONG TITLE**

**General Description:**

This bill addresses processes related to water rights and interference claims.

**Highlighted Provisions:**

This bill:

~~↔~~ [~~↔~~ ~~addresses judicial review of a state engineer order;~~ ~~↔~~↔]

- ▶ provides for the effect of the filing of a proof;
- ▶ addresses certificates of appropriation;
- ▶ establishes that filing a protest or judicial review action is not required to bring a judicial interference claim; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

~~↔~~ [~~↔~~ ~~73-3-14, as last amended by Laws of Utah 2008, Chapters 165 and 382~~ ~~↔~~↔]

73-3-16, as last amended by Laws of Utah 2013, Chapter 221

73-3-17, as last amended by Laws of Utah 2011, Chapter 128

ENACTS:



28 73-3-32, Utah Code Annotated 1953



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

31 **↩** ~~[Section 1. Section 73-3-14 is amended to read:~~

32 ~~73-3-14. Judicial review of state engineer order.~~

33 ~~(1) (a) [A] Except as provided in Subsection (1)(c), a person aggrieved by an order of~~  
34 ~~the state engineer may obtain judicial review in accordance with Title 63G, Chapter 4,~~  
35 ~~Administrative Procedures Act, and this section.~~

36 ~~(b) Venue for judicial review of an informal adjudicative proceeding is in the county in~~  
37 ~~which the water source or a portion of the water source is located.~~

38 ~~(c) Judicial review of an adjudicative proceeding approving or rejecting an application~~  
39 ~~filed under this title may only be obtained by an aggrieved person who:~~

40 ~~(i) requested the adjudicative proceeding; or~~

41 ~~(ii) timely filed a protest to the application in accordance with Section 73-3-7.~~

42 ~~(2) The state engineer shall be joined as a respondent in a petition to review the state~~  
43 ~~engineer's decision, but no judgment for costs or expenses of the litigation may be rendered~~  
44 ~~against the state engineer.~~

45 ~~(3) A person who files a petition for judicial review as authorized in this section shall:~~

46 ~~(a) name the state engineer as a respondent; and~~

47 ~~(b) provide written notice in accordance with Subsection (5) to each person who filed a~~  
48 ~~protest in accordance with Section 73-3-7 of:~~

49 ~~(i) the filing of the petition for judicial review; and~~

50 ~~(ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure,~~  
51 ~~Rule 24.~~

52 ~~(4) In addition to the requirements of Subsection (3), a protestant in the adjudicative~~  
53 ~~proceeding who files a petition for judicial review shall also name as a respondent the person:~~

54 ~~(a) who requested the adjudicative proceeding; or~~

55 ~~(b) against whom the state engineer brought the adjudicative proceeding.~~

56 ~~(5) The written notice required by this section shall:~~

57 ~~(a) be mailed:~~

58 ~~(i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and] ↩~~

59 ~~§→ [(ii) to the address on record with the state engineer's office at the time the order is~~  
 60 ~~issued; and~~

61 ~~\_\_\_\_\_ (b) include:~~

62 ~~\_\_\_\_\_ (i) a copy of the petition; and~~

63 ~~\_\_\_\_\_ (ii) the address of the court in which the petition is pending.~~

64 ~~\_\_\_\_\_ (6) If a person who files a petition for judicial review fails to provide notice as required~~  
 65 ~~by this section, the court shall dismiss the petition without prejudice upon:~~

66 ~~\_\_\_\_\_ (a) the motion of a party;~~

67 ~~\_\_\_\_\_ (b) the special appearance of a person who:~~

68 ~~\_\_\_\_\_ (i) participated in the adjudicative proceeding; and~~

69 ~~\_\_\_\_\_ (ii) is not a party; or~~

70 ~~\_\_\_\_\_ (c) the court's own motion.~~

71 ~~\_\_\_\_\_ (7) A person who files a petition for judicial review is not required to:~~

72 ~~\_\_\_\_\_ (a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not~~  
 73 ~~required by this section; and~~

74 ~~\_\_\_\_\_ (b) notwithstanding Subsection 63G-4-402(2)(a)(iv), identify all parties to the~~  
 75 ~~adjudicative proceeding.] ←§~~

76 Section 2. Section 73-3-16 is amended to read:

77 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**  
 78 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**  
 79 **Statement in lieu of proof of appropriation or change.**

80 (1) Sixty days before the date set for the proof of appropriation or proof of change to be  
 81 made, the state engineer shall notify the applicant by mail when proof of completion of the  
 82 works and application of the water to a beneficial use is due.

83 (2) (a) On or before the date set for completing the proof in accordance with the  
 84 approved application, the applicant shall file proof with the state engineer on forms furnished  
 85 by the state engineer.

86 (b) The filing of a proof in accordance with this section ~~§→ [does not:~~

87 ~~\_\_\_\_\_ (i) constitute a new] is a ←§ request for agency action under Title 63G, Chapter 4,~~

88 Administrative Procedures Act, §→ [other than] only ←§ between the applicant and the state  
 88a engineer ~~§→ [; or~~

89 ~~\_\_\_\_\_ (ii) require the state engineer to provide notice to any person that the proof has been~~Ⓢ

90 ~~filed~~ ←§ .

91 (3) Except as provided in Subsection (4), the applicant shall submit the following  
92 information:

- 93 (a) a description of the works constructed;  
94 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;  
95 (c) the method of applying the water to beneficial use; and  
96 (d) (i) detailed measurements of water put to beneficial use;  
97 (ii) the date the measurements were made; and  
98 (iii) the name of the person making the measurements.

99 (4) (a) (i) On applications filed for appropriation or permanent change of use of water  
100 to provide a water supply for state projects constructed pursuant to [~~Title 73;~~] Chapter 10,  
101 Board of Water Resources - Division of Water Resources, or for federal projects constructed by  
102 the United States Bureau of Reclamation for the use and benefit of the state, any of its  
103 agencies, its political subdivisions, public and quasi-municipal corporations, or water users'  
104 associations of which the state, its agencies, political subdivisions, or public and  
105 quasi-municipal corporations are stockholders, the proof shall include:

- 106 (A) a statement indicating construction of the project works has been completed;  
107 (B) a description of the major features with appropriate maps, profiles, drawings, and  
108 reservoir area-capacity curves;  
109 (C) a description of the point or points of diversion and rediversion;  
110 (D) project operation data;  
111 (E) a map showing the place of use of water and a statement of the purpose and method  
112 of use;  
113 (F) the project plan for beneficial use of water under the applications and the quantity  
114 of water required; and  
115 (G) a statement indicating what type of measuring devices have been installed.

116 (ii) The director of the Division of Water Resources shall sign proofs for the state  
117 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the  
118 federal projects specified in Subsection (4)(a).

119 (b) Proof on an application for appropriation or permanent change for a surface storage  
120 facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water