

WATER RELATED PROCESS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Keven J. Stratton

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

29

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

31 ~~Ĥ→ [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] ←Ĥ~~

59 ~~Ĥ→ [(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.] ←Ĥ~~

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 ~~Ĥ→~~ **[does not:**

87 ~~_____ (i) constitute a new]~~ **is a ←Ĥ request for agency action under Title 63G, Chapter 4,**

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

121 supply for the reasonable requirements of the public shall include:

- 122 (i) a description of the completed water storage facility;
- 123 (ii) a description of the major project features and appropriate maps, profiles, drawings,
124 and reservoir area-capacity curves as required by the state engineer;
- 125 (iii) the quantity of water stored in acre-feet;
- 126 (iv) a description of the water distribution facility for the delivery of the water; and
- 127 (v) the project plan for beneficial use of water including any existing contracts for
128 water delivery.

129 (5) The proof on [~~all applications~~] an application shall be sworn to by the applicant or
130 the applicant's appointed representative.

131 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall
132 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed
133 professional engineer that show:

- 134 (i) the location of the completed works;
- 135 (ii) the nature and extent of the completed works;
- 136 (iii) the natural stream or source from which and the point where the water is diverted
137 and, in the case of a nonconsumptive use, the point where the water is returned; and
- 138 (iv) the place of use.

139 (b) The state engineer may waive the filing of maps, profiles, and drawings if in the
140 state engineer's opinion the written proof adequately describes the works and the nature and
141 extent of beneficial use.

142 (7) In those areas in which general determination proceedings are pending, or have
143 been concluded, under [~~Title 73,~~] Chapter 4, Determination of Water Rights, the state engineer
144 may petition the district court for permission to:

- 145 (a) waive the requirements of this section and Section 73-3-17; and
- 146 (b) permit each owner of an application to file a verified statement to the effect that the
147 applicant has completed the appropriation or change and elects to file a statement of water
148 users claim in the proposed determination of water rights or any supplement to it in accordance
149 with [~~Title 73,~~] Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or
150 proof of change.

151 (8) This section does not apply to an instream flow water right authorized by Section

152 73-3-30.

153 Section 3. Section 73-3-17 is amended to read:

154 **73-3-17. Certificate of appropriation -- Evidence.**

155 (1) Upon the satisfaction of the state engineer that an appropriation, a permanent
156 change of point of diversion, place or purpose of use, or a fixed time change authorized by
157 Section 73-3-30 has been perfected in accordance with the application, and that the water
158 appropriated or affected by the change has been put to a beneficial use, as required by Section
159 73-3-16 or 73-3-30, the state engineer shall issue a certificate, in duplicate, setting forth:

- 160 (a) the name and post-office address of the person by whom the water is used;
161 (b) the quantity of water in acre-feet or the flow in second-feet appropriated;
162 (c) the purpose for which the water is used;
163 (d) the time during which the water is to be used each year;
164 (e) the name of the stream or water source:
165 (i) from which the water is diverted; or
166 (ii) within which an instream flow is maintained;
167 (f) the date of the appropriation or change; and
168 (g) other information that defines the extent and conditions of actual application of the
169 water to a beneficial use.

170 (2) A certificate issued on an application for one of the following types of projects need
171 show no more than the facts shown in the proof submitted under Section 73-3-16:

172 (a) a project constructed according to [~~Title 73,~~] Chapter 10, Board of Water Resources
173 - Division of Water Resources;

174 (b) a federal project constructed by the United States Bureau of Reclamation, referred
175 to in Section 73-3-16; and

176 (c) a surface water storage facility in excess of 1,000 acre-feet constructed by a public
177 water supplier.

178 (3) A certificate issued under this section does not:

179 (a) extend the rights described in the application[-]; or

180 (b) constitute a determination by the state engineer as to whether the perfected
181 appropriation or change has or may result in interference, impairment, injury, or other harm to
182 another water right.

183 (4) Failure to file proof of appropriation or proof of change of the water on or before
184 the date set [~~therefor~~] for the filing causes the application to lapse.

185 (5) (a) One copy of a certificate issued under this section shall be filed in the office of
186 the state engineer and the other copy shall be delivered to the appropriator or to the person
187 making the change who may record the certificate in the office of the county recorder of the
188 county in which the water is diverted from the natural stream or source.

189 (b) The state engineer is not required to deliver a copy of a certificate issued under this
190 section to a person other than the appropriator or the person making the change.

191 (6) The certificate issued under this section is prima facie evidence of the owner's right
192 to use the water in the quantity, for the purpose, at the place, and during the time specified
193 [~~therein~~] in the certificate, subject to prior rights.

194 Section 4. Section **73-3-32** is enacted to read:

195 **73-3-32. Filing protest or judicial review action not required to bring judicial**
196 **interference claim.**

197 The following are not a prerequisite to filing a judicial action for interference, damages,
198 declaratory, injunctive, or other relief, based on the use of water under an existing water right:

199 (1) filing a protest to a water right application filed pursuant to this chapter, or to a
200 claim filed under Section [73-5-13](#); or

201 (2) participation as a party in a judicial review action challenging the state engineer's
202 action on a water right application filed pursuant to this chapter.