

1                                   **WATER RELATED PROCESS AMENDMENTS**

2   2020 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Ralph Okerlund**

5                                   House Sponsor: Keven J. Stratton

---

---

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11           This bill:

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

17 **Money Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           None

21 **Utah Code Sections Affected:**

22 AMENDS:

23           **73-3-16**, as last amended by Laws of Utah 2013, Chapter 221

24           **73-3-17**, as last amended by Laws of Utah 2011, Chapter 128

25 ENACTS:

26           **73-3-32**, Utah Code Annotated 1953

---

---

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

29           Section 1. Section **73-3-16** is amended to read:

30           **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**  
31 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**  
32 **Statement in lieu of proof of appropriation or change.**

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

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

39           (b) The filing of a proof in accordance with this section is a request for agency action  
40 under Title 63G, Chapter 4, Administrative Procedures Act, only between the applicant and the  
41 state engineer.

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

- 44           (a) a description of the works constructed;
- 45           (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
- 46           (c) the method of applying the water to beneficial use; and
- 47           (d) (i) detailed measurements of water put to beneficial use;
- 48                 (ii) the date the measurements were made; and
- 49                 (iii) the name of the person making the measurements.

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

- 57           (A) a statement indicating construction of the project works has been completed;

58 (B) a description of the major features with appropriate maps, profiles, drawings, and  
59 reservoir area-capacity curves;

60 (C) a description of the point or points of diversion and rediversion;

61 (D) project operation data;

62 (E) a map showing the place of use of water and a statement of the purpose and method  
63 of use;

64 (F) the project plan for beneficial use of water under the applications and the quantity  
65 of water required; and

66 (G) a statement indicating what type of measuring devices have been installed.

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

70 (b) Proof on an application for appropriation or permanent change for a surface storage  
71 facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water  
72 supply for the reasonable requirements of the public shall include:

73 (i) a description of the completed water storage facility;

74 (ii) a description of the major project features and appropriate maps, profiles, drawings,  
75 and reservoir area-capacity curves as required by the state engineer;

76 (iii) the quantity of water stored in acre-feet;

77 (iv) a description of the water distribution facility for the delivery of the water; and

78 (v) the project plan for beneficial use of water including any existing contracts for  
79 water delivery.

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

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

85 (i) the location of the completed works;

- 86 (ii) the nature and extent of the completed works;
- 87 (iii) the natural stream or source from which and the point where the water is diverted
- 88 and, in the case of a nonconsumptive use, the point where the water is returned; and
- 89 (iv) the place of use.

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

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

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

102 (8) This section does not apply to an instream flow water right authorized by Section  
103 73-3-30.

104 Section 2. Section 73-3-17 is amended to read:

105 **73-3-17. Certificate of appropriation -- Evidence.**

106 (1) Upon the satisfaction of the state engineer that an appropriation, a permanent  
107 change of point of diversion, place or purpose of use, or a fixed time change authorized by  
108 Section 73-3-30 has been perfected in accordance with the application, and that the water  
109 appropriated or affected by the change has been put to a beneficial use, as required by Section  
110 73-3-16 or 73-3-30, the state engineer shall issue a certificate, in duplicate, setting forth:

- 111 (a) the name and post-office address of the person by whom the water is used;
- 112 (b) the quantity of water in acre-feet or the flow in second-feet appropriated;
- 113 (c) the purpose for which the water is used;

- 114 (d) the time during which the water is to be used each year;
- 115 (e) the name of the stream or water source:
- 116 (i) from which the water is diverted; or
- 117 (ii) within which an instream flow is maintained;
- 118 (f) the date of the appropriation or change; and
- 119 (g) other information that defines the extent and conditions of actual application of the
- 120 water to a beneficial use.

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

- 123 (a) a project constructed according to [~~Title 73,~~] Chapter 10, Board of Water Resources
- 124 - Division of Water Resources;
- 125 (b) a federal project constructed by the United States Bureau of Reclamation, referred
- 126 to in Section 73-3-16; and
- 127 (c) a surface water storage facility in excess of 1,000 acre-feet constructed by a public
- 128 water supplier.

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

- 130 (a) extend the rights described in the application[-]; or
- 131 (b) constitute a determination by the state engineer as to whether the perfected
- 132 appropriation or change has or may result in interference, impairment, injury, or other harm to
- 133 another water right.

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

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

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

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

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

146 **73-3-32. Filing protest or judicial review action not required to bring judicial**  
147 **interference claim.**

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

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

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