

**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:**

73-3-32, Utah Code Annotated 1953

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

Section 1. Section 73-3-14 is amended to read:

**73-3-14. Judicial review of state engineer order.**

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

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

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

(i) requested the adjudicative proceeding; or

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

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

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

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

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

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

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

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

(a) who requested the adjudicative proceeding; or

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

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

(a) be mailed:

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

(ii) to the address on record with the state engineer's office at the time the order is issued; and

(b) include:

(i) a copy of the petition; and

(ii) the address of the court in which the petition is pending.

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

(a) the motion of a party;

(b) the special appearance of a person who:

(i) participated in the adjudicative proceeding; and

(ii) is not a party; or

(c) the court's own motion.

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

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

(b) notwithstanding Subsection 63G-4-402(2)(a)(iv), identify all parties to the adjudicative proceeding.

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

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

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

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

(b) The filing of a proof in accordance with this section does not:

(i) constitute a new request for agency action under Title 63G, Chapter 4, Administrative Procedures Act, other than between the applicant and the state engineer; or

(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 redirection;
- 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

supply for the reasonable requirements of the public shall include:

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

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

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

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

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

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

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

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

73-3-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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