

1 **ADJUDICATION OF WATER RIGHTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Joel K. Briscoe**

5 Senate Sponsor: Ralph Okerlund

7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes to the procedure for a general adjudication of water rights
10 under Title 73, Water and Irrigation.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ permits the state engineer, in a general adjudication of water rights under Title 73,
14 Water and Irrigation, to divide a general adjudication area into divisions and
15 subdivisions and proceed with the general adjudication action individually for each
16 division or subdivision;

17 ▶ describes requirements, in a general adjudication of water rights under Title 73,
18 Water and Irrigation, for the state engineer to:

- 19 • file proof of the publication of notice of commencement of the general
20 adjudication with the district court;
- 21 • search and update the records of the state engineer's office to locate claimants to
22 the general adjudication;
- 23 • serve summons to an individual known claimant, general unknown claimants,
24 and the United States as a claimant;
- 25 • give notice of further proceedings;
- 26 • give notice of completion of the state engineer's survey of the general
27 adjudication area, division, or subdivision for a claimant's water right;
- 28 • compile submitted statements of claim and file them with the district court; and
29 • give notice of completion of the state engineer's report and proposed

30 determination;

31 ▶ describes requirements, in a general adjudication of water rights under Title 73,
32 Water and Irrigation, for a claimant to:

33 • file a written statement of claim to claim a water right in the general
34 adjudication; and

35 • file an objection to the state engineer's report and proposed determination; and

36 ▶ makes technical changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **73-4-1**, as last amended by Laws of Utah 2001, Chapter 107

44 **73-4-3**, as last amended by Laws of Utah 2009, Chapters 365 and 388

45 **73-4-4**, as last amended by Laws of Utah 2009, Chapter 388

46 **73-4-5**, Utah Code Annotated 1953

47 **73-4-9**, as last amended by Laws of Utah 2009, Chapter 388

48 **73-4-11**, as last amended by Laws of Utah 2010, Chapter 320

49 **73-4-22**, Utah Code Annotated 1953



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

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

53 **73-4-1. Action for a general adjudication of water rights -- Requirements for state**
54 **engineer to file -- Adjudication area divisions.**

55 ~~[(1) Upon a verified petition to the state engineer, signed by five or more or a majority~~
56 ~~of water users upon any stream or water source, requesting the investigation of the relative~~
57 ~~rights of the various claimants to the waters of such stream or water source, it shall be the duty~~

58 of the state engineer, if upon such investigation he finds the facts and conditions are such as to
59 justify a determination of said rights, to file in the district court an action to determine the
60 various rights.]

61 (1) (a) Five or more, or a majority of, water users of a water source may submit a
62 signed, verified petition to the state engineer requesting an investigation of the rights of all
63 claimants to the water of the water source.

64 (b) Upon receipt of a petition described in Subsection (1)(a), the state engineer shall:

65 (i) investigate whether the facts and circumstances of the water source and its
66 claimants justify a general determination of water rights; and

67 (ii) if justified, file an action in the district court for a general adjudication of water
68 rights.

69 (c) In any suit involving water rights the court may order an investigation and survey
70 by the state engineer of all the water rights on the source or system involved.

71 ~~[(2) (a) As used in this section, "executive director" means the executive director of the~~
72 ~~Department of Environmental Quality.]~~

73 ~~[(b)]~~ (2) (a) The executive director of the Department of Environmental Quality, with
74 the concurrence of the governor, may request that the state engineer file in the district court an
75 action to determine the various water rights in the stream, water source, or basin for an area
76 within the exterior boundaries of the state for which any person or organization or the federal
77 government is actively pursuing or processing a license application for a storage facility or
78 transfer facility for high-level nuclear waste or greater than class C radioactive waste.

79 ~~[(c)]~~ (b) Upon receipt of a request made under Subsection (2)~~[(b)]~~(a), the state engineer
80 shall file ~~[the]~~ an action in the district court for a general adjudication of water rights.

81 ~~[(d)]~~ (c) If a general adjudication ~~[has been]~~ is filed in the state district court regarding
82 the area requested pursuant to Subsection (2)~~[(b)]~~(a), the state engineer and the state attorney
83 general shall join the United States as a party to the action.

84 (3) When an action for a general adjudication of water rights for a certain area is filed
85 in district court, the state engineer may divide the general adjudication area into divisions and

86 subdivisions if the state engineer:

87 (a) fulfills the requirements of this chapter individually for each division or
88 subdivision; and

89 (b) petitions the court to incorporate the decrees for all the divisions and subdivisions
90 within a general adjudication area into a final decree for the entire general adjudication area.

91 Section 2. Section **73-4-3** is amended to read:

92 **73-4-3. Notice and procedure for general adjudication of water rights -- Survey of**
93 **water source -- Statements of claim -- Incomplete records.**

94 (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or
95 by any person claiming the right to use the waters of any river system, lake, underground water
96 basin, or other natural source of supply that involves a determination of the rights to the major
97 part of the water of the source of supply or the rights of 10 or more of the claimants of the
98 source of supply, the clerk of the district court shall notify the state engineer that a suit has
99 been filed.

100 (2) (a) The state engineer then shall, for each general adjudication area, division, or
101 subdivision, give notice of commencement of action to the claimants by publishing notice:

102 (i) once a week for two consecutive weeks in a newspaper designated by the court as
103 most likely to give notice to such claimants; and

104 (ii) in accordance with Section 45-1-101 for two weeks.

105 (b) The notice of commencement of action shall state:

106 (i) an action has been filed;

107 (ii) the name of the action;

108 (iii) the name and location of the court in which the action is pending; and

109 (iv) the name or description of the water source involved.

110 ~~[(c) Claimants to the use of water shall notify the state engineer within 90 days from~~
111 ~~the date notice is given of their names and addresses.]~~

112 ~~[(d) After the expiration of 90 days, the state engineer shall prepare a list that shall~~
113 ~~include the names and addresses of all claimants then of record in the state engineer's office~~

114 and all claimants who have notified the state engineer of their addresses, and this list shall be
115 certified by the state engineer as complete and filed with the clerk of the court.]

116 [~~(e) At any time during the action:~~]

117 [~~(i) the court upon petition may by order permit the addition of names and addresses to
118 the list prepared under Subsection (2)(d);]~~

119 [~~(ii) the court upon petition by the state engineer may by order permit amendment or
120 substitution of the list prepared under Subsection (2)(d); and]~~

121 [~~(iii) the clerk of the court may, without court order, upon notice from the claimant and
122 upon amendment of the state engineer's records note any change of address:]~~

123 [~~(f) If any claimant appears in this action by an attorney, the clerk shall note on the list
124 the address of the attorney:]~~

125 [~~(g) After the list is filed by the state engineer, notice of further proceedings, after
126 service of summons, may be given without court order by mailing a copy thereof to the persons
127 listed at the addresses listed and by mailing a copy thereof to any attorney of record for any
128 such person, and notice may be given to the listed persons and to all other claimants by
129 publication in the manner and for the time prescribed by order of the district court and in
130 accordance with Subsection (2)(a):]~~

131 (c) The state engineer shall file proof of the publication of notice of commencement of
132 action with the district court.

133 (3) The state engineer shall, for each general adjudication area, division, or
134 subdivision, search the records of the state engineer's office to locate all possible claimants, and
135 continue to update the records during the adjudication and search for additional claimants.

136 (4) In accordance with Section 73-4-4, the state engineer shall serve a summons to each
137 claimant of record in the state engineer's office within a general adjudication area, division, or
138 subdivision.

139 (5) (a) After serving summons to a claimant, the state engineer shall give notice of
140 further proceedings to:

141 (i) the claimant; and

142 (ii) an attorney who enters an appearance in court for the claimant.

143 (b) A court order is not required as a prerequisite for giving notice under Subsection
144 (5)(a).

145 (c) The state engineer shall give the notice described in Subsection (5)(a):

146 (i) electronically, if the state engineer can verify the claimant's receipt;

147 (ii) by mail;

148 (iii) by personal service; or

149 (iv) if the notice is for the benefit of the claimants generally, by publishing the notice.

150 (d) Notice given by mail is complete when the notice is mailed.

151 (6) Except as provided in Subsection (8)(d)(ii), if the state engineer serves a notice
152 required by this chapter, the state engineer shall, before the day on which the final decree for
153 the general adjudication area, division, or subdivision is filed, file with the clerk of the district
154 court a certificate of service that contains the name and address of the claimant served with the
155 notice.

156 ~~[(3)]~~ (7) After [the statement or list is filed] publishing notice of commencement of an
157 action, the state engineer shall:

158 (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other
159 works diverting water from the water source; and

160 (b) hold a public meeting in the survey area to inform a water right claimant of the
161 survey.

162 ~~[(4) (a) As soon as the survey is complete, the state engineer shall file notice of~~
163 ~~completion with the clerk and give notice by mail or by personal service to all claimants whose~~
164 ~~names appear on the list that:]~~

165 ~~[(i) the survey is complete;]~~

166 ~~[(ii) their claims are due within 90 days from the date of notice; and]~~

167 ~~[(iii) within 90 days after service of the notice, each claimant must file a written~~
168 ~~statement with the clerk of the court setting forth the claimant's respective claim to the use of~~
169 ~~the water.]~~

170 ~~[(b) Notice given by mail is complete when the notice is mailed.]~~

171 (8) (a) After the survey described in Subsection (7) is complete for a claimant, the state
172 engineer shall give notice, in accordance with Subsection (5), of completion of survey to the
173 claimant.

174 (b) Notice of completion of survey shall include:

175 (i) a statement that:

176 (A) the state engineer has investigated the claimant's water right; and

177 (B) a claimant who desires to claim a water right in the action shall, in accordance with
178 Section 73-4-5, submit a written statement of claim within 90 days after the day on which the
179 notice is issued; and

180 (ii) a statement of claim form that the claimant must complete in order to comply with
181 the provisions of Section 73-4-5.

182 (c) A claimant served with a notice of completion of survey who desires to claim a
183 water right in the action shall file a written statement of claim in accordance with Section
184 73-4-5.

185 (d) (i) The state engineer shall compile the statements of claim described in Subsection
186 (8)(c) and file them with the clerk of the district court.

187 (ii) If the state engineer files a claimant's statement of claim with the district court in
188 accordance with Subsection (8)(d)(i), the state engineer is not required to file a certificate of
189 service that relates to the notice of completion of survey for that claimant.

190 ~~[(5)]~~ (9) When a suit has been filed by the state engineer as provided by Section
191 73-4-1, or by any person involving the major part of the waters of any river system, lake,
192 underground water basin, or other source of supply, or the rights of 10 or more of the water
193 claimants of the source of supply, whether the suit is filed prior to or after the enactment
194 hereof, the state engineer, upon receiving notice, shall examine the records of the state
195 engineer's office with respect to the water source involved, and if they are incomplete to make
196 such further investigation and survey as may be necessary for the preparation of the report and
197 recommendation as required by Section 73-4-11.

198 ~~[(6)]~~ (10) In all such cases the court shall proceed to determine the water rights
199 involved in the manner provided by this chapter, and not otherwise.

200 Section 3. Section **73-4-4** is amended to read:

201 **73-4-4. Summons for general adjudication of water rights -- Requirements to**
202 **serve summons individually and generally -- Statement of claim requirement.**

203 ~~[(1) (a) Claimants whose names appear on the list prescribed by Section 73-4-3 at the~~
204 ~~time the list is filed by the state engineer with the clerk of the court shall be served with a~~
205 ~~summons issued out of the district court and served as a summons is served in other civil~~
206 ~~cases.]~~

207 ~~[(b) Upon the filing by the state engineer of an affidavit that the state engineer has~~
208 ~~searched the records of the state engineer's office and has listed all names as required by~~
209 ~~Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state~~
210 ~~engineer of their names and addresses, summons may be served on all other persons and~~
211 ~~claimants not listed on said list by publication of summons:]~~

212 ~~[(i) in a newspaper or newspapers designated by the judge of the court as most likely to~~
213 ~~give notice to the persons served, five times, once each week for five successive weeks; and]~~

214 ~~[(ii) in accordance with Section 45-1-101 for five weeks:]~~

215 (1) (a) The state engineer shall, by mail, serve a summons to a claimant of record in the
216 state engineer's office within a general adjudication area, division, or subdivision.

217 (b) (i) The state engineer may serve, by publication, a general summons to claimants in
218 a general adjudication area, division, or subdivision, who are not of record in the state
219 engineer's office, if the state engineer files an affidavit with the district court, verifying that the
220 state engineer has, in accordance with Section 73-4-3, searched the records of the state
221 engineer's office for claimants in the general adjudication area, division, or subdivision.

222 (ii) The state engineer shall publish, in accordance with the Utah Rules of Civil
223 Procedure, a general summons described in Subsection (1)(b)(i):

224 (A) once a week for five successive weeks in one or more newspapers, determined by
225 the judge of the district court as most likely to give notice to the claimants served; and

226 (B) for five weeks, in accordance with Section 45-1-101.

227 ~~[(e)]~~ (iii) Service of a general summons is completed upon the last required date of
228 ~~[the]~~ publication.

229 ~~[(d)]~~ (c) The summons shall be substantially in the following form:

230 "In the District Court of County, State of Utah, in the matter of the general
231 adjudication of water rights in the described water source.

232 **SUMMONS**

233 The State of Utah to the said defendant:

234 You are hereby summoned to appear and defend the above entitled action which is
235 brought for the purpose of making a general determination of the water rights of the described
236 water source. Upon the service of this summons upon you, you will thereafter be subject to the
237 jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the
238 above entitled action and to protect your rights therein. When the state engineer has completed
239 the survey you will be given a further written notice, either in person or by mail, sent to your
240 last-known address, that you must file a water users claim in this action setting forth the nature
241 of your claim, and said notice will specify the date upon which your water users claim is due
242 and thereafter you must file said claim within the time set and your failure so to do will
243 constitute a default in the premises and a judgment may be entered against you declaring and
244 adjudging that you have no right in or to the waters of described water source."

245 ~~[(2) At the time the said notice of completion of survey is given, the state engineer
246 must mail or otherwise deliver a form upon which the claimant shall present in writing, as
247 provided in the next succeeding section, all the particulars relating to the appropriation of the
248 water of said river system or water source to which the claimant lays claim.]~~

249 (2) If the state engineer is required, under this section, to serve a summons on the
250 United States, the state engineer shall serve the summons in accordance with federal law.

251 Section 4. Section **73-4-5** is amended to read:

252 **73-4-5. Requirements for statement of claim in general adjudication of water**
253 **rights.**

254 Each person claiming a right to use ~~[any]~~ water of ~~[such]~~ a river system or water source
255 shall, within 90 days after the ~~[completed service of the]~~ day on which notice of completion of
256 survey ~~[prescribed by]~~ described in Section 73-4-3 ~~[hereof, file in the office of]~~ is served, file
257 with the state engineer or the clerk of the district court a ~~[statement in writing which shall be~~
258 ~~signed and verified by the oath of the claimant, and shall include as near as may be the~~
259 ~~following: The]~~ written statement of claim, signed, and verified under oath, by the claimant,
260 that includes:

261 (1) the name and ~~[post-office]~~ address of the ~~[person making the claim]~~ claimant;

262 (2) the nature of ~~[the]~~ use on which the claim of appropriation is based;

263 (3) the flow of water used in cubic feet per second, or the quantity of water stored in
264 acre-feet, and the time during which ~~[it]~~ the flow or stored water has been used each year;

265 (4) the name of the stream or other source from which the water is diverted, the point
266 on ~~[such]~~ the stream or source where the water is diverted, and a description of the nature of
267 the diverting works;

268 (5) the date when the first work for diverting the water ~~[was begun,]~~ began, and a
269 description of the nature of ~~[such]~~ the work;

270 (6) the date when the water was first used, the flow in cubic feet per second, or the
271 quantity of water stored in acre-feet, and the time ~~[during which]~~ the water was used during the
272 first year; ~~[and]~~

273 (7) the place and manner of ~~[present]~~ current use; and ~~[such]~~

274 (8) other facts ~~[as will]~~ that clearly define the extent and nature of the appropriation
275 claimed, or ~~[as may be]~~ that are required by the ~~[blank]~~ written form ~~[which shall be furnished~~
276 ~~by the state engineer under the direction of the court]~~ provided by the state engineer with the
277 notice of completion of survey.

278 Section 5. Section **73-4-9** is amended to read:

279 **73-4-9. Failure to file statement -- Relief.**

280 The filing of each statement by a claimant shall be considered notice to all persons of
281 the claim of the party making the same, and any person failing to make and deliver such

282 statement of claim to the state engineer or the clerk of the court within the time prescribed by
283 law shall be forever barred and estopped from subsequently asserting any rights, and shall be
284 held to have forfeited all rights to the use of the water theretofore claimed by him; provided,
285 that any claimant, upon whom no other service of said notice shall have been made than by
286 publication in a newspaper and as required in Section 45-1-101, may apply to the court for
287 permission to file a statement of claim after the time therefor has expired, and the court may
288 extend the time for filing such statement, not exceeding six months from the publication of said
289 notice; but, before said time is extended, the applicant shall give notice by publication in a
290 newspaper having general circulation and as required in Section 45-1-101 on such river system
291 or near the water source to all other persons interested in the water of such river system or
292 water source, and shall make it appear to the satisfaction of the court that during the pendency
293 of the proceedings he had no actual notice thereof in time to appear and file a statement and
294 make proof of his claim; and all parties interested may be heard as to the matter of his actual
295 notice of the pendency of such proceedings.

296 Section 6. Section **73-4-11** is amended to read:

297 **73-4-11. Report and recommendation by engineer to court -- Notice -- Public**
298 **meeting.**

299 (1) Within 30 days after the [~~expiration of the 90 days allowed for filing statements of~~
300 ~~claims~~] last day on which a claimant may file a statement of claim in accordance with Section
301 73-4-5, the state engineer shall begin to tabulate the facts contained in the statements filed and
302 to investigate, whenever the state engineer shall consider necessary, the facts set forth in the
303 statements by reference to the surveys already made or by further surveys, and shall as
304 expeditiously as possible report to the court a recommendation of how all rights involved shall
305 be determined.

306 (2) After full consideration of the statements of claims, and of the surveys, records, and
307 files, and after a personal examination of the river system or water source involved, if the
308 examination is considered necessary, the state engineer shall:

309 (a) formulate a report and a proposed determination of all rights to the use of the water

310 of the river system or water source;

311 ~~[(b) mail or deliver a copy of the report and proposed determination to each claimant~~
312 ~~with notice that any claimant dissatisfied with the report and proposed determination may~~
313 ~~within 90 days from the date of mailing or delivery file with the clerk of the district court a~~
314 ~~written objection; and]~~

315 (b) serve notice of completion of the report and proposed determination, in accordance
316 with Subsection 73-4-3(5), to each claimant of record in the state engineer's office within the
317 general adjudication area, division, or subdivision, that includes:

318 (i) (A) a copy of the report and proposed determination; or

319 (B) instructions on how to obtain or access an electronic copy of the report and
320 proposed determination; and

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

324 (c) hold a public meeting in the area covered by the report and proposed determination
325 to describe the report and proposed determination to the claimants.

326 (3) A claimant who desires to object to the state engineer's report and proposed
327 determination shall, within 90 days after the day on which the state engineer served the
328 claimant notice of completion of the report and proposed determination, file a written objection
329 to the report and proposed determination with the clerk of the district court.

330 ~~[(3)]~~ (4) The state engineer shall distribute the waters from the natural streams or other
331 natural sources:

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

334 (b) if the right to the use of the waters has been decreed or adjudicated, in accordance
335 with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

336 Section 7. Section **73-4-22** is amended to read:

337 **73-4-22. State engineer's duty to search records for and serve summons on**

338 **claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown**
339 **claimants.**

340 The state engineer, throughout the pendency of proceedings, shall serve summons in the
341 manner prescribed by Section 73-4-4 upon all claimants to the use of water in the described
342 source embraced by said action, whenever the names and addresses of said persons come to the
343 attention of the state engineer. [~~The names and addresses of such persons so served shall be~~
344 ~~added to the list prescribed by Section 73-4-3 hereof.~~] Immediately after the notice of the
345 proposed determination is given, in accordance with Section 73-4-11 hereof, the state engineer
346 shall diligently search for the names and addresses of any claimants to water in the source
347 covered by the proposed determination who have not been previously served with summons
348 other than by publication, and any such persons located shall forthwith be served with
349 summons, and after the state engineer has exhausted his search for other claimants he shall
350 make such fact known to the district court by affidavit and the clerk of the district court shall
351 again publish summons five times, once each week, for five successive weeks which said
352 service shall be binding upon all unknown claimants.