	WATER GENERAL ADJUDICATION AMENDMENTS
	2019 GENERAL SESSION
	STATE OF UTAH
	Chief Sponsor: Joel Ferry
	Senate Sponsor:
LONG	G TITLE
Gener	al Description:
	This bill enacts and amends provisions relating to water rights.
Highli	ghted Provisions:
	This bill:
	<ul> <li>enacts and amends provisions related to an application to appropriate or</li> </ul>
perman	nently change a small amount of water;
	<ul> <li>enacts and amends provisions related to a right to appeal during a general</li> </ul>
adjudi	cation of water rights;
	<ul> <li>enacts and amends provisions related to the state engineer's duty to search records</li> </ul>
for and	l serve summons on claimants during a general adjudication of water rights;
and	
	<ul> <li>makes technical and conforming changes.</li> </ul>
Money	y Appropriated in this Bill:
	None
Other	Special Clauses:
	None
Utah (	Code Sections Affected:
AMEN	NDS:
	73-3-5.6, as last amended by Laws of Utah 2009, Chapter 367
	73-4-16, as last amended by Laws of Utah 2016, Chapter 72

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28 29	73-4-22, as last amended by Laws of Utah 2016, Chapter 72
29 30	Be it enacted by the Legislature of the state of Utah:
31	Section 1. Section <b>73-3-5.6</b> is amended to read:
32	73-3-5.6. Applications to appropriate or permanently change a small amount of
33	water Proof of appropriation or change.
34	(1) As used in this section:
35	(a) "Application" means an application to:
36	(i) appropriate a small amount of water; or
37	(ii) permanently change a small amount of water.
38	(b) "Livestock water right" means a right for:
39	(i) livestock to consume water:
40	(A) directly from the water source; or
41	(B) from an impoundment into which the water is diverted; and
42	(ii) associated uses of water related to the raising and care of livestock.
43	(c) "Proof" means proof of:
44	(i) appropriation; or
45	(ii) permanent change.
46	(d) "Small amount of water" means the amount of water necessary to meet the
47	requirements of:
48	(i) one residence;
49	(ii) 1/4 acre of irrigable land; and
50	(iii) a livestock watering right for:
51	(A) 10 cattle; or
52	(B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than
53	cattle.
54	(2) The state engineer may approve an application if:
55	(a) the state engineer undertakes a thorough investigation of the application;
56	(b) notice is provided in accordance with Subsection (3);
57	(c) the application complies with the state engineer's regional policies and restrictions
58	and Section 73-3-3 or 73-3-8, as applicable; and

59	(d) the application does not conflict with a political subdivision's ordinance:
60	(i) for planning, zoning, or subdivision regulation; or
61	(ii) under Section 10-8-15.
62	(3) (a) Advertising of an application specified in Subsection (2) is at the discretion of
63	the state engineer.
64	(b) If the state engineer finds that the uses proposed by the application may impair
65	other rights, before approving the application, the state engineer shall give notice of the
66	application according to Section 73-3-6.
67	(4) An applicant receiving approval under this section is responsible for the time limit
68	for construction and submitting proof as required by Subsection (6).
69	(5) Sixty days before the end of the time limit for construction, the state engineer shall
70	notify the applicant by mail when proof is due.
71	(6) (a) Notwithstanding Section $73-3-16$ , the state engineer shall issue a certificate
72	under Section 73-3-17 if [an applicant files an affidavit, on a form provided by the state
73	engineer, as proof.], as proof, the applicant files an affidavit:
74	[ <del>(b) The affidavit shall:</del> ]
75	[(i) specify the amount of:]
76	[ <del>(A) irrigated land; and</del> ]
77	[(B) livestock watered; and]
78	[(ii) declare the residence is constructed and occupied.]
79	(i) on a form provided by the state engineer;
80	(ii) that specifies the amount of:
81	(A) irrigated land; and
82	(B) livestock watered; and
83	(iii) that declares the residence is constructed and occupied.
84	[(c)] (b) The form provided by the state engineer under Subsection (6)(a) may require
85	the information the state engineer determines is necessary to maintain accurate records
86	regarding the point of diversion and place of use.
87	(7) If an applicant does not file the proof required by Subsection (6) by the day on
88	which the time limit for construction ends, the application lapses under Section 73-3-18.
89	(8) (a) [An] Except as provided in Subsections (9) and (10), an applicant whose

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90	application lapses may file a request with the state engineer to reinstate the application, if the
91	applicant demonstrates that the applicant or the applicant's predecessor in interest:
92	(i) constructed and occupied a residence within the time limit for construction; and
93	(ii) beneficially uses the water.
94	(b) [Hf] Except as provided in Subsection (10), if an applicant meets the requirements
95	of Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer
96	shall issue a certificate[:] for the beneficial uses the applicant attests to in an affidavit described
97	in Subsection (6).
98	[(i) for the amount of water actually in use as described in the affidavit; and]
99	[(ii) with a priority date of the day on which the applicant files the request for
100	reinstatement of the application.]
101	(9) For an application related to the use of water located within an area where general
102	determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are
103	pending or concluded, an applicant whose application lapses may not file a request for
104	reinstatement with the state engineer if:
105	(a) the application lapsed before the state engineer issued notice of the time to file a
106	statement of water users claim under Section 73-4-3; and
107	(b) the applicant failed to timely submit a statement of claim as described in
108	Subsection (10)(c)(ii).
109	(10) For an application related to the use of water located within an area where general
110	determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are
111	pending, the state engineer shall allow a reinstatement request under Subsection (8)(a) and,
112	instead of issuing a certificate, evaluate the reinstatement request and statement of claim as part
113	of the general adjudication for the area, if:
114	(a) the application lapsed before the state engineer issued notice of the time to file a
115	statement of water users claim under Section 73-4-3;
116	(b) the applicant files the request for reinstatement no more than 90 days after the day
117	on which the state engineer issues the notice of the time to file statements of claim in
118	accordance with Section 73-4-3; and
119	(c) the applicant files:
120	(i) an affidavit described in Subsection (6); and

121	(ii) a timely statement of claim under Section 73-4-5.
122	(11) The priority date for an application reinstated under this section is the day on
123	which the applicant files the request for reinstatement of the application.
124	Section 2. Section <b>73-4-16</b> is amended to read:
125	73-4-16. Appeals.
126	(1) There [shall be] is a right of appeal from a final judgment of the district court to the
127	Supreme Court as provided in Section 78A-3-102.
128	(2) (a) There is a right of appeal to the Supreme Court from a district court order,
129	judgment, or decree that resolves an objection filed in accordance with Section 73-4-9.5 or
130	<u>73-4-11.</u>
131	(b) The entry of a decree for a general adjudication area, division, or subdivision
132	described in Section 73-4-1 is not a prerequisite to exercise the right to appeal described in
133	Subsection (2)(a).
134	$\left[\frac{(2)}{(3)}\right]$ The appeal shall be upon the record made in the district court, and may as in
135	equity cases be on questions of both law and fact.
136	Section 3. Section 73-4-22 is amended to read:
137	73-4-22. State engineer's duty to search records for and serve summons on
138	claimants Filing of affidavit Publication of summons Binding on unknown
139	claimants.
140	(1) The state engineer, throughout the pendency of proceedings, shall serve summons
141	in the manner prescribed by Section 73-4-4 upon all claimants to the use of water in the
142	described source embraced by said action, whenever the names and addresses of said persons
143	come to the attention of the state engineer.
144	(2) Immediately after the notice of the [proposed determination] list of unclaimed
145	rights of record is given, in accordance with Section [73-4-11] 73-4-9.5 hereof, the state
146	engineer shall diligently search for the names and addresses of any claimants to water in the
147	source covered by the [proposed determination] general adjudication area, division, or
148	subdivision who have not been previously served with summons other than by publication, and
149	shall serve summons on any such persons located [shall forthwith be served with summons].
150	(3) (a) After the state engineer has exhausted the search for other claimants, as
151	described in Subsection (2), the state engineer shall:

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152	[(a)] (i) make such fact known to the district court by affidavit; and
153	[(b)] (ii) [as ordered by the court, again] in accordance with Subsection (3)(b), publish
154	summons five times, once each week, for five successive weeks [which said service shall be
155	binding upon all unknown claimants].
156	(b) A summons described in Subsection (3)(a)(ii) shall be substantially in the following
157	form:
158	"In the District Court of County, State of Utah, in the matter of the general
159	adjudication of water rights in the described water source.
160	<u>SUMMONS</u>
161	The State of Utah to the said defendant:
162	You are hereby summoned in the above entitled action, which is brought for the
163	purpose of making a general determination of the water rights of the described water source.
164	Upon the service of this summons on you, you will thereafter be subject to the jurisdiction of
165	the entitled court and, if you have or intend to claim a water right, it shall be your duty to
166	follow further proceedings in the above entitled action and to defend and protect your water
167	rights therein. If you have not been served with summons other than by publication in a
168	newspaper and you claim a water right for which you have not previously filed a statement of
169	claim, you must file a statement of claim in accordance with Section 73-4-5 in this action
170	setting forth the nature of your claim within 90 days after the last date of publication of this
171	summons. Your failure to do so will constitute a default in the premises and a judgment may be
172	entered against you declaring and adjudging that you have forfeited all rights to the use of
173	water within the described water source and that you are forever barred and estopped from
174	subsequently asserting any right to the use of water not claimed."
175	(4) An unknown claimant who has not been served with a summons other than by
176	publication in a newspaper and has or intends to claim a water right, shall file a statement of
177	claim in accordance with Section 73-4-5 within 90 days after the last day on which a summons
178	is published as described in Subsection (3)(a)(ii).
179	(5) Service of the published summons described in Subsection (3)(a)(ii) is binding on
180	all unknown claimants.