

1 **ADJUDICATION OF WATER RIGHTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

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

5 **Senate Sponsor: Ralph Okerlund**

6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

13 ▶ describes requirements, in a general determination of rights under Title 73, Water
14 and Irrigation, for the state engineer to:

- 15 • prepare and maintain a list of claimants;
- 16 • give notice of further proceedings;
- 17 • give notice to a claimant of the opportunity to make a claim;
- 18 • compile submitted statements of claim and file them with the court;
- 19 • serve a summons to a claimant; and
- 20 • provide a copy of the state engineer's report and proposed determination to a

21 claimant;

22 ▶ requires a claimant to file an objection to the state engineer's report and proposed
23 determination in a certain manner; and

24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **73-4-3**, as last amended by Laws of Utah 2009, Chapters 365 and 388

32 **73-4-4**, as last amended by Laws of Utah 2009, Chapter 388

33 **73-4-11**, as last amended by Laws of Utah 2010, Chapter 320

34

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

36 Section 1. Section **73-4-3** is amended to read:

37 **73-4-3. Procedure for action to determine rights -- Notice to and list of claimants**
38 **-- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice**
39 **of completion.**

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

46 (2) (a) The state engineer then shall give notice to the claimants by publishing notice:

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

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

50 (b) The notice shall state:

51 (i) an action has been filed;

52 (ii) the name of the action;

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

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

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

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

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

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

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

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

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

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

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

76 ~~[(3) After the statement or list is filed, the state engineer shall:]~~

77 (c) A claimant to the use of water shall notify the state engineer of the claimant's name
78 and address within 90 days after the last day on which notice is published.

79 (d) After the 90-day period described in Subsection (2)(c), the state engineer shall:

80 (i) prepare and maintain a list that includes the names and addresses of:

81 (A) all claimants of record in the state engineer's office;

82 (B) all claimants who have notified the state engineer of their address; and

83 (C) an attorney who enters an appearance in court for a claimant in the action;

84 (ii) certify the list as complete; and

85 (iii) file a copy of the list with the clerk of the court.

86 (e) During the action:

87 (i) upon petition, the court may order that a claimant's name and address be added to
88 the list described in Subsection (2)(d); and

89 (ii) the state engineer shall maintain the list by:

- 90 (A) adding a claimant as ordered under Subsection (2)(e)(i);
91 (B) adding, substituting, or deleting names and addresses according to the state
92 engineer's records;
93 (C) adding an attorney's name and address, if the attorney enters an appearance in court
94 for a claimant in the action;
95 (D) removing an attorney's name and address, if the attorney withdraws from
96 representing a claimant in the action; and
97 (E) updating an attorney's address, as necessary.
98 (f) After the state engineer files a copy of the list with the clerk of the court, the state
99 engineer may give notice of further proceedings without a court order, as follows:
100 (i) electronically, if the state engineer can verify the claimant's receipt, or by mail or
101 personal service, to:
102 (A) each claimant described in Subsection (2)(d)(i)(A) or (B); and
103 (B) an attorney described in Subsection (2)(d)(i)(C); and
104 (ii) by publishing the notice of further proceedings in accordance with Subsection
105 (2)(a).
106 (3) After the state engineer files a copy of the list with the court, the state engineer
107 shall:
108 (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other
109 works diverting water from the water source; and
110 (b) hold a public meeting in the survey area to inform a water right claimant of the
111 survey.
112 ~~[(4) (a) As soon as the survey is complete, the state engineer shall file notice of~~
113 ~~completion with the clerk and give notice by mail or by personal service to all claimants whose~~
114 ~~names appear on the list that:]~~
115 ~~[(i) the survey is complete;]~~
116 ~~[(ii) their claims are due within 90 days from the date of notice; and]~~
117 ~~[(iii) within 90 days after service of the notice, each claimant must file a written~~
118 ~~statement with the clerk of the court setting forth the claimant's respective claim to the use of~~
119 ~~the water.]~~
120 (4) (a) After a survey described in Subsection (3) is complete, the state engineer shall

121 give notice to each claimant described in Subsection (2)(d)(i)(A) or (B) and an attorney
122 described in Subsection (2)(d)(i)(C) that:

- 123 (i) the state engineer has investigated the claimant's water rights; and
- 124 (ii) the claimant may submit a written statement of claim within 90 days after the day
125 on which the notice is issued.

126 (b) The state engineer shall give the notice described in Subsection (4)(a):

- 127 (i) electronically, if the state engineer can verify the claimant's receipt;
- 128 (ii) by mail; or
- 129 (iii) by personal service.

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

131 (d) In response to the state engineer's notice described in Subsection (4)(a), a claimant
132 who desires to claim a water right in the action shall file a written statement of claim in
133 accordance with Section 73-4-5.

134 (e) The state engineer shall compile the statements of claim submitted under
135 Subsection (4)(d) and file them with the court.

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

144 (6) In all such cases the court shall proceed to determine the water rights involved in
145 the manner provided by this chapter, and not otherwise.

146 Section 2. Section 73-4-4 is amended to read:

147 **73-4-4. Summons -- Service -- Publication -- Form -- Delivery of form for**
148 **claimant's statement.**

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

152 cases.]

153 (1) (a) The state engineer shall, by mail, serve a summons to each claimant described in
154 Subsection 73-4-3(2)(d)(i)(A) or (B).

155 (b) Upon the filing by the state engineer of an affidavit that the state engineer has
156 searched the records of the state engineer's office and has listed all names as required by
157 Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state
158 engineer of their names and addresses, summons may be served on all other persons and
159 claimants not listed on said list by publication of summons:

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

162 (ii) in accordance with Section 45-1-101 for five weeks.

163 (c) Service of summons is completed upon the date of the publication.

164 (d) The summons shall be substantially in the following form:

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

167 SUMMONS

168 The State of Utah to the said defendant:

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

180 (2) At the time the said notice of completion of survey is given, the state engineer must
181 mail or otherwise deliver a form upon which the claimant shall present in writing, as provided
182 in the next succeeding section, all the particulars relating to the appropriation of the water of

183 said river system or water source to which the claimant lays claim.

184 Section 3. Section 73-4-11 is amended to read:

185 **73-4-11. Report and recommendation by engineer to court -- Notice -- Public**
186 **meeting.**

187 (1) Within 30 days after the [~~expiration of the 90 days allowed for filing statements of~~
188 ~~claims,] last day on which a claimant is allowed to file a statement of claim under Subsection
189 73-4-3(4)(d), the state engineer shall begin to tabulate the facts contained in the statements
190 filed and to investigate, whenever the state engineer shall consider necessary, the facts set forth
191 in the statements by reference to the surveys already made or by further surveys, and shall as
192 expeditiously as possible report to the court a recommendation of how all rights involved shall
193 be determined.~~

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

197 (a) formulate a report and a proposed determination of all rights to the use of the water
198 of the river system or water source;

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

203 (b) provide, electronically if the state engineer can verify the claimant's receipt, or by
204 mail or personal service, to each claimant described in Subsection 73-4-3(2)(d)(i)(A) or (B)
205 and an attorney described in Subsection 73-4-3(2)(d)(i)(C):

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

207 (B) notice on how to obtain or access an electronic copy of the report and proposed
208 determination; and

209 (ii) notice of the claimant's right to file an objection to the determination within 90
210 days after the day on which the report and determination were mailed, personally served, or
211 sent electronically; and

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

214 (3) A claimant who desires to object to the state engineer's report and proposed
215 determination shall, within 90 days after the day on which the state engineer mailed or
216 delivered the report and proposed determination, file an objection to the report and proposed
217 determination with:

- 218 (a) the state engineer; and
- 219 (b) the clerk of the district court.

220 [~~3~~] (4) The state engineer shall distribute the waters from the natural streams or other
221 natural sources:

- 222 (a) in accordance with the proposed determination or modification to the proposed
- 223 determination by court order until a final decree is rendered by the court; or
- 224 (b) if the right to the use of the waters has been decreed or adjudicated, in accordance
- 225 with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

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Office of Legislative Research and General Counsel