

07/12/2012

Water and Irrigation

Chapter 4 Determination of Water Rights

Section 1 By engineer on petition of users -- Upon request of Department of Environmental Quality.

73-4-1. By engineer on petition of users -- Upon request of Department of Environmental Quality.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

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

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

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

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

(3) In order to more efficiently carry out the duties described in this Chapter, the state engineer may divide a general adjudication area into divisions and subdivisions and proceed with the requirements of this Chapter with respect to each division and subdivision. The decrees for the divisions and subdivisions within a general adjudication area shall be incorporated into a final decree for that adjudication area.

Amended by Chapter 107, 2001 General Session

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Section 3 Procedure for action to determine rights -- Notice to and list of claimants -- Manner of giving notice of further proceedings -- Duties of engineer -- Survey -- Notice of completion.

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

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

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

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

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

(b) The notice shall state:

(i) an action has been filed;

(ii) the name of the action;

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

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

(c) ~~Claimants to the use of water shall notify~~ The state engineer may give notice of further proceedings, after service of summons, without court order

(i) electronically, if the state engineer ~~within 90 days from the date notice is given of their names and addresses:~~

~~— (d) After the expiration of 90 days, the state engineer shall prepare a list that shall include the names and addresses of all claimants then~~ can verify the claimant's receipt, or by mail or personal service to

(A) all claimants of record in the state engineer's office ~~and:~~

(B) all claimants who have notified the state engineer of their ~~addresses, and this list shall be certified by the state engineer as complete and filed with the clerk of the court:~~

~~— (e) At any time during the action:~~

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

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

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

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

~~— (g) After the list is filed by the state engineer, notice of further proceedings, after service of summons, may be given without court order by mailing a copy thereof to the persons listed at the addresses listed and by mailing a copy thereof to any attorney of record for any such person, and notice may be given to the listed persons and to all other claimants by publication in the manner and for the time prescribed by order of the district court and~~ address:

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

(ii) by publishing the notice in accordance with Subsection ~~(2)(a)~~2(a) if the notice is for the benefit of the claimants generally.

(d) The State Engineer shall file with the clerk of the district court a certificate of service containing the names and addresses of all claimants served with notice pursuant to this Chapter.

(3) After the ~~statement or list is filed~~notice has been published, the state engineer shall:

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

(b) hold a public meeting in the survey area to inform ~~at~~the water right claimants of the survey.

(4) ~~As soon as~~After the survey described in Subsection (3) is complete, the state engineer shall file notice of completion with the clerk and give notice by mail or by personal service to all claimants whose

names appear on the list that:

—(i) the survey is complete;

—(ii) their claims are due within 90 days from the date of notice; and

—(iii)give notice to each claimant in accordance Subsection (2)(c) and an attorney described in subsection 2(c)(i)(C) that

(i) the state engineer has investigated the claimant's water rights, and

(ii) the claimant may submit a written statement of claim within 90 days after ~~service of the notice, each claimant must file a written statement with the clerk of the court setting forth the claimant's respective claim to the use of the water~~the day on which the notice is issued.

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

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

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

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

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

Amended by Chapter 365, 2009 General Session

Amended by Chapter 388, 2009 General Session

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Section 4 Summons -- Service -- Publication -- Form -- Delivery of form for claimant's statement.

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

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

—(a) The State Engineer shall, by mail, serve a summons to each claimant described in Subsection 73-4-3(2)(c)(i)(A) or (B).

(b) (b) Upon the filing by the state engineer of an affidavit that the state engineer has searched the records of the state engineer's office ~~and has listed all names~~ as required by Section 73-4-3, and upon proof of publication of notice to all claimants to notify the state engineer of their names and addresses, summons may be served on all other persons and claimants ~~not listed on said list~~ in accordance with the Utah Rules of Civil Procedure by publication of summons:

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

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

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

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

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

## SUMMONS

The State of Utah to the said defendant:

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

(d) Summons shall be served on the United States in accordance with federal law.

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

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Section 5 Statements by claimants.

73-4-5. Statements by claimants.

Each person claiming a right to use any water of such river system or water source shall, within 90 days after the completed service of the notice of completion of survey prescribed by Section 73-4-3 hereof, file ~~in~~with the ~~office~~ State Engineer ~~of~~ the clerk of the district court a statement in writing which shall be signed and verified by the oath of the claimant, and shall include as near as may be the following: The name and post-office address of the person making the claim; the nature of the use on which the claim of appropriation is based; the flow of water used in cubic feet per second or the quantity of water stored in acre-feet, and the time during which it has been used each year; the name of the stream or other source from which the water is diverted, the point on such stream or source where the water is diverted, and the nature of the diverting works; the date when the first work for diverting the water was begun, and the nature of such work; the date when the water was first used, the flow in cubic feet per second or the quantity of water stored in acre-feet, and the time during which the water was used the first year; and the place and manner of present use; and such other facts as will clearly define the extent and nature of the appropriation claimed, or as may be required by the blank form which shall be furnished by the state engineer under the direction of the court.

No Change Since 1953

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Section 11 Report and recommendation by engineer to court -- Notice -- Public meeting.

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

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

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

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

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

(i)(A) a copy of the report and proposed determination to each claimant with notice that any claimant dissatisfied with; or

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

(ii) notice of the claimant's right to file an objection to the proposed determination within 90 days after the day on which the report and proposed determination may within 90 days from the date of mailing or delivery file with the clerk of the district court a written objection; and were mailed, personally served, or sent electronically; and

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

(3) A claimant who desires to object to the state engineer's report and proposed determination shall, within 90 days after the day on which the state engineer mailed or delivered the report and proposed determination, file a written objection to the report and proposed determination with the clerk of the district court.

(34) The state engineer shall distribute the waters from the natural streams or other natural sources:

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

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

Amended by Chapter 320, 2010 General Session