

Heirship Affidavits Proposal

Summary:

The purpose of this proposal is to clarify the state engineer is to rely on documents a county recorder considers effective in conveying land title. There have been some instances where all county recorders are not on the same page about what documents convey land title (for instance affidavits of heirship). This has placed the state engineer in the difficult position as ROCs are submitted and attempts are made to process title at the Division uniformly throughout the state. This proposal defers to county recorders on this issue and should help simplify the working relationship with the Division.

73-1-11. Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.

(1) A water right appurtenant to land shall pass to the grantee of the land unless the grantor:

- (a) specifically reserves the water right or any part of the water right in the land conveyance document;
- (b) conveys a part of the water right in the land conveyance document; or
- (c) conveys the water right in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.

(2) The state engineer shall consider documents recorded and relied upon in county recorder land ownership records to be effective in the conveyance of water rights by appurtenance.

~~(32)~~ (a) If the water right has been exercised in irrigating different parcels of land at different times, it shall pass to the grantee of a parcel of land on which the water right was exercised next preceding the time the land conveyance was executed.

(b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.

~~(43)~~ In any conveyance, the grantee assumes the obligation for any unpaid assessment.

~~(54)~~ The right to the use of water evidenced by shares of stock in a corporation shall not be deemed appurtenant to land.

~~(65)~~ (a) This Subsection (5) governs land conveyances executed on or after May 4, 1998, and has no retrospective operation.

(b) For purposes of land conveyances only, a water right evidenced by any of the following documents is appurtenant to land:

- (i) a decree entered by a court;
- (ii) a certificate issued under Section 73-3-17;
- (iii) a diligence claim for surface or underground water filed pursuant to Section 73-5-13;
- (iv) a water user's claim executed for general determination of water rights proceedings conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to Section 73-3-16;
- (v) an approval for an application to appropriate water issued under Section 73-3-10;

(vi) an approval for an application to permanently change the place of use of water issued under Section 73-3-10; or

(vii) an approval for an application to exchange water issued under Section 73-3-20.

(c) For purposes of land conveyances only, the land to which a water right is appurtenant is the authorized place of use of water as described in the:

(i) decree;

(ii) certificate;

(iii) diligence claim;

(iv) water user's claim;

(v) approved application to appropriate water;

(vi) approved application to permanently change the place of use of water; or

(vii) approved exchange application.

(d) If a grantor conveys part of the water right in a land conveyance document pursuant to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by the grantor.

(e) If the land conveyed constitutes only a portion of the authorized place of use for the water right, the amount of the appurtenant water right that passes to the grantee shall be proportionate to the conveyed portion of the authorized place of use.

(76) Beginning July 1, 2011, a deed conveying fee simple title to land may include a water rights addendum as provided in Section 57-3-109.

Application Withdrawal Proposed Legislation
May 2, 2012

Summary:

The purpose of this proposal is to clarify that applications may be withdrawn by the applicant and set forth the process in statute.

Proposed Language for a new section in Chapter 73-3 (suggest 73-3-9):

An applicant as listed on records of the state engineer may withdraw by written request an Application to Appropriate, Change Application, Exchange Application, Nonuse Application, or Application to Request an Extension of Time to Submit Proof either before or after approval by the state engineer. A Change Application approved by the state engineer to amend an unperfected application to appropriate may not be withdrawn.

The state engineer may as a condition of approval of a Permanent Change Application consider to be withdrawn all previously filed but unperfected Permanent Change Applications on the water right(s) to be changed.

The state engineer shall by order acknowledge an application withdrawal and update records of the state engineer to reflect the withdrawal. Once withdrawn, an application is no longer considered filed with the state engineer and is of no further force or effect. The withdrawal of an application does not entitle the applicant to a refund of an application fee paid to process the application.

Deed Addendum Proposal

Purpose:

Provide incentive for people to use water right deed addendums and county recorders to forward deed addendums to the state engineer. Note: In addition to the statute change below this proposal will require a resolution to modify the deed addendum form instructions.

73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording of deed -- Report of water right conveyance.

(1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.

(b) The deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used.

(c) A recorded deed of a water right shall from the time of its recording in the office of the county recorder constitute notice of its contents to all persons.

(d) Beginning July 1, 2011, a deed under Subsection (1)(a) may include a water rights addendum as provided in Section 57-3-109.

(2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the procedures applicable to securities set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

(3) (a) To update water right ownership on the records of the state engineer, a water right owner shall submit a report of water right conveyance to the state engineer.

(b) The report of water right conveyance shall be on forms provided by the state engineer.

(c) The report shall be prepared by:

(i) or prepared under the direction of and certified by, any of the following persons licensed in Utah:

(A) an attorney;

(B) a professional engineer;

(C) a title insurance producer; or

(D) a professional land surveyor; or

(ii) the water right owner as authorized by rule of the state engineer.

(d) The filing and processing of a report of water right conveyance with the state engineer is neither an adjudication of water right ownership nor an opinion as to title or validity of the water right.

(e) The state engineer shall adopt rules that specify:

(i) the information required in a report of water right conveyance; and

(ii) the procedures for processing the reports.

(f) A water right addendum recorded and forwarded to the state engineer by a county recorder as described in Section 57-3-109 shall be considered by the state engineer to be a submitted report of water right conveyance as described in this subsection.

Fixed Time Application Proposal

Summary:

The purpose of this proposal is to remove the requirement for the submission of proof on fixed time applications allowed in Section 73-3-8(2). There has been significant confusion in the water user community over proof due and fixed time expiration dates and notices the state engineer must send out regarding approaching deadlines. Fixed time applications are not permanent water rights and the state engineer's experience has been there is little benefit to submitting proof and receiving a certificate. The state engineer routinely requires water use reporting on fixed time applications and believes that information more appropriately addresses record needs for fixed time applications.

73-3-10. Approval or rejection of application.

- (1) When the approval or rejection of an application is decided, a record of the decision shall be made in the state engineer's office.
- (2) The state engineer's decision shall be mailed to the applicant.
- (3) If the application is approved, the applicant shall be authorized upon receipt of the decision to:
 - (a) proceed with the construction of the necessary works;
 - (b) take any steps required to apply the water to the use named in the application; and
 - (c) perfect the proposed application.
- (4) If the application is rejected, the applicant shall take no steps toward the prosecution of the proposed work or the diversion and use of the public water under the application.
- (5) The state engineer shall state in any decision approving an application the time within which the construction work must be completed and the water applied to beneficial use unless the application is for a fixed time period.

Administrative Priority Modification Authority Reference Correction

Summary:

The purpose of this proposal is to correct statute to recognize all sections where priority may be modified administratively. Separate reinstatement provisions were added in recent years to sections 73-3-5.6 and 73-3-20. This proposal includes references to those sections.

73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.

(1) When an application lapses for failure of the applicant to comply with this title's provisions or the state engineer's order, notice of the lapse shall promptly be given to the applicant by regular mail.

(2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement.

(3) The original priority date of a lapsed application may not be reinstated, except upon a showing of fraud or mistake of the state engineer.

(4) The priority of an application shall be determined by the date of receiving the written application in the state engineer's office, except as provided in Section [73-3-5.6](#), [Section 73-3-12](#), [Section 73-3-20](#) and as provided in this section.

(5) Before issuance of a certificate of appropriation, rights claimed under applications for the appropriation of water may be transferred or assigned by instruments in writing.

(6) An instrument transferring or assigning a right described in Subsection (5), when acknowledged or proved and certified in the manner provided by law for the acknowledgment or proving of conveyances of real estate, may be filed in the office of the state engineer and shall from time of filing impart notice to all persons of the contents thereof.

(7) Every assignment of an application that is not filed as provided by this section is void as against any subsequent assignee in good faith and for valuable consideration of the same application or any portion thereof where the subsequent assignee's own assignment is first duly filed.

STORM WATER AMENDMENTS

6

7 LONG TITLE

8 General Description:

9 This bill prohibits the state engineer from commencing an enforcement action under
10 certain circumstances.

23 Utah Code Sections Affected:

24 AMENDS:

25 73-2-25

29 Section 1. Section 73-2-25 is amended to read:

30 73-2-25. State engineer enforcement powers.

31 (1) For purposes of this section, "initial order" means one of the following issued by
32 the state engineer:

33 (a) a notice of violation; or

34 (b) a cease and desist order.

35 (2) (a) [~~The~~] *Except as provided in Subsection (2)(b), the* state engineer may
36 commence an enforcement action under this section if the state engineer finds that a person:

37 (i) is diverting, impounding, or using water for which no water right has been
38 established;

39 (ii) is diverting, impounding, or using water in violation of an existing water right;

40 (iii) violates Section 73-5-4 ;

41 (iv) violates Section 73-5-9 ;

42 (v) violates a written distribution order from the state engineer;

43 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
44 or bank of a natural stream channel;45 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
46 Safety;

47 (viii) fails to submit a report required by Section 73-3-25 ; or

48 (ix) engages in well drilling without a license required by Section 73-3-25 .

49 *(b) The state engineer may not commence an enforcement action against a person*
50 *under Subsection (2)(a)(i), if the person directly captures, or stores, precipitation on the surface*
51 *of, or under, a parcel owned or leased by the person, including in a catch basin, storm drain*
52 *pipe, swell, or pond, if the collection or storage:*

53 *(i) is consistent with local laws and ordinances;*54 *(ii) does not interfere with an existing water right; and*55 *(iii) is designed to slow, detain, or retain storm water or protect watersheds from*
56 *pollution with the intention that the precipitation:*57 *(A) absorbs into the ground or is released for discharge; and*58 *(B) is not put to beneficial use.*

59 [~~(b)~~] *(c)* To commence an enforcement action under this section, the state engineer
60 shall issue an initial order, which shall include:

61 (i) a description of the violation;

62 (ii) notice of any penalties to which a person may be subject under Section 73-2-26 ;

63 and

64 (iii) notice that the state engineer may treat each day's violation of the provisions listed
65 in Subsection (2)(a) as a separate violation under Subsection 73-2-26 (1)(d).66 [~~(e)~~] *(d)* The state engineer's issuance and enforcement of an initial order is exempt
67 from Title 63G, Chapter 4, Administrative Procedures Act.68 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
69 state engineer shall make rules necessary to enforce an initial order, which shall include:70 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the
71 initial order if a person to whom an initial order is issued fails to respond to the order or abate

72 the violation;

73 (b) the right to a hearing, upon request by a person against whom an initial order is

74 issued; and

75 (c) provisions for timely issuance of a final order after:

76 (i) the person to whom the initial order is issued fails to respond to the order or abate

77 the violation; or

78 (ii) a hearing held under Subsection (3)(b).

79 (4) A person may not intervene in an enforcement action commenced under this

80 section.

81 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the

82 state engineer shall serve a copy of the final order on the person against whom the order is

83 issued by:

84 (a) personal service under Utah Rules of Civil Procedure 5; or

85 (b) certified mail.

86 (6) (a) The state engineer's final order may be reviewed by trial de novo by the district

87 court in:

88 (i) Salt Lake County; or

89 (ii) the county where the violation occurred.

90 (b) A person shall file a petition for judicial review of the state engineer's final order

91 issued under this section within 20 days from the day on which the final order was served on

92 that person.

93 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a

94 final order issued under this section.

95 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the

96 state may recover all court costs and a reasonable attorney fee.