

A G E N D A

EXECUTIVE WATER TASK FORCE

July 12, 2012, 9:00 AM
Auditorium, Natural Resources Complex

- I. Welcome and Introductions - Mike Styler
- II. Water Conservation Proposal – David Hartvigsen
- III. 73-1-11 Conveyance by Appurtenance – Boyd Clayton
- IV. 73-5-13 Diligence Claim Proposal – Boyd Clayton
- V. HB369 General Adjudication Statutes – Ward Wagstaff
- VI. Date of Next Meeting

- (1) As used in this section:
 - (a) “Conserved water” means the water that has historically been consumed by phreatophytic vegetation along the water conveyance system corridor that will be deprived of water by the conservation project, plus any water that has historically evaporated as a result of the water surface area being unenclosed but which will no longer be unenclosed because of the conservation project;
 - (b) “Conservation project” means a project which conserves water by enclosing an open water conveyance facility in a pipe or fully lined canal or ditch which prevents virtually any water from escaping into the soils adjacent to the pipe or fully lined canal or ditch where seepage or leakage from the water conveyance facility has supported a significant amount of phreatophytic vegetation along the water conveyance system corridor and/or has permitted the evaporation of a significant amount of water due to a large exposed water surface area;
 - (c) “Owner of a conservation project” means the owner or operator of a water conveyance system which is being upgraded by a conservation project and which is paying the largest portion of the costs of the conservation project, exclusive of any governmental grants;
 - (d) “Primary water right” means the water right under which the largest percentage of the water being conveyed through the water conveyance system is supplied; and
 - (e) “Water conveyance system” means the system upgraded by the conservation project as it was configured prior to the conservation project.
- (2) The owner of a conservation project may file an application to appropriate water under this section and in accordance with Section 73-3-8 for up to ninety percent of the conserved water made available by a conservation project, regardless of whether the area in which the conservation project is located is closed to new appropriations.
- (3) An application to appropriate conserved water may not be filed under this section by anyone other than the owner of the conservation project which made the conserved water available.
- (4) An application filed under this section shall be processed in the same manner as any other application to appropriate water, except as otherwise specified in this section.
- (5) An application filed under this section shall include an attachment which sets forth the following additional information:
 - (a) a map depicting the water conveyance system;
 - (b) a map depicting the conservation project;
 - (c) a map showing the specific areas of phreatophytic vegetation along the water conveyance system corridor that will be deprived of water by the conservation project, by type of vegetation, and the surface areas of water bodies that will no longer be subject to evaporation because of the conservation project;
 - (d) representative photographs of the phreatophytic vegetation along the water conveyance system corridor that will be deprived of water by the conservation project;
 - (e) the data and calculations upon which the amount of conserved water is based, including citations to the sources of evapotranspiration and evaporation rates are based;
 - (f) a brief narrative of the history of the water conveyance system; and
 - (g) any other information that the state engineer requires.
- (6) In considering a application filed under this section, the state engineer shall review the data and calculations submitted by the applicant upon which the amount of conserved water is based to determine whether there is adequate evidence that conserved water has been made available by the conservation project upon which a water right may be granted.
- (7) In acting upon an application filed under this section, the state engineer may approve the application in whole or in part or may reject the application if adequate evidence has not been presented to give the state engineer reason to believe that conserved water has been made available by the conservation project.
- (8) The priority date of a application approved under this section shall be the priority date of the primary water right used in water conveyance system. If the primary water right was moved into the water conveyance system by change application, the priority date shall be the priority date of the change application by which the primary water right was moved into the water conveyance system.

Reliance on County Records in Conveyance by Appurtenance 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 when updating water right records based on appurtenance to land. There have been instances where all county recorders are not on the same page about what documents convey land title (for instance affidavits of heirship). There are also deeds which convey land which contain defects the county has overlooked. 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 will shift the focus from following a chain of deeds for conveyance of land to looking for deeds which preclude the conveyance of water rights with land.

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.

(3) (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.

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

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

(6) (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.

(7) 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.

Corrected Water User Claims

The purpose of this proposed legislation is to clarify the process to correct a water users claim so that adequate notice of the correction is provided other water users and insure claims are altered by an authorized party. Additionally, the proposal addresses a conflict with the general adjudication process which upon completion is presumed to have addressed all claims.

73-5-13. Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.

(1) (a) All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees, or by notice of claim filed pursuant to law, shall submit the claim to the state engineer.

(b) Subsections (2) through (7) shall only apply to claims or corrected claims submitted to the state engineer pursuant to this section after May ~~15, 2013~~, 1997.

(2) (a) Each claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms furnished by the state engineer setting forth any information the state engineer requires, including:

(i) the name and post office address of the person making the claim;

(ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;

(iii) the source of supply;

(iv) the priority date of the right;

(v) the location of the point of diversion with reference to a United States land survey corner;

(vi) the place of use;

(vii) the nature and extent of use;

(viii) the time during which the water has been used each year; and

(ix) the date when the water was first used.

(b) The claim shall also include the following information verified under oath by a registered engineer or land surveyor:

(i) measurements of the amount of water diverted;

(ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply which the source is capable of producing; and

(iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.

(c) The state engineer may require additional information as necessary to evaluate any claim including:

(i) affidavits setting forth facts of which the affiant has personal knowledge;

(ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
(iii) authenticated copies of original diaries, personal histories, or other historical documents which document the claimed use of water; and
(iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.

(3) (a) A claim may be corrected by submitting to the state engineer a verified corrected claim designated as such, including the information required under subsection (2), and bearing the same number as the original claim.

(b) No fee shall be charged for submitting a corrected claim if filed before the claim it corrects is published as described in subsection (4)(a)(iv). -

(c) A corrected claim may be submitted only by the claimant shown on the original claim or the successor in interest as shown on records of the state engineer.

(d) Corrected claims submitted to the state engineer shall be treated in all respects as original claims under provisions of this section.

(4) (a) Upon submission by a claimant of a claim that is acceptably complete under Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:

- (i) file the claim;
- (ii) endorse the date of its receipt;
- (iii) assign the claim a water right number; and
- (iv) publish a notice of the claim following the same procedures as provided in Section

73-3-6.

(b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.

(c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.

(5) (a) The state engineer shall:

- (i) conduct a field investigation of each claim filed; and
- (ii) prepare a report of the investigation.

(b) The report of the investigation shall:

- (i) become part of the file on the claim; and
- (ii) be admissible in any administrative or judicial proceeding on the validity of the

claim.

(6) (a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this section may file an action in district court to determine the validity of the claim, whether or not the claim has been accepted for filing by the state engineer.

(b) Venue for the action shall be in the county in which the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.

(c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.

(d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.

(e) Any person filing an action challenging the validity of a claim to the use of water

under this section shall notify the state engineer of the pendency of the action in a manner prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation, until the court adjudicates the matter.

(f) Upon the entering of any final order or decree in any judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, which shall become part of the state engineer's file on the claim.

(7) The state engineer may make rules consistent with this section specifying information required to be included in a claim and claim procedures.

(8) The district court in a general adjudication pursuant to Title 73, Chapter 4, may by decree after completion of final summons pursuant to Section 73-4-22 close the area to the filing of claims as described in this section, chapter 4 close an area to the filing of claims as described in this section. Any claims submitted to the state engineer after such closure are to be returned to the claimant without further action.