

## **GUIDELINES FOR DOCUMENTING RIGHTS NOT OF RECORD IN A GENERAL ADJUDICATION**

In a water rights general adjudication, a claimant wishing to file a water user's claim for a water right not already on the records of the State Engineer that is based on water use prior to the enactment of the statutes governing the appropriation of water rights (March 11, 1903 for surface water or March 21, 1935 for groundwater) must document the basis of the claimed right. These guidelines provide recommendations to substantiate pre-statutory claims for either surface water or groundwater. The State Engineer will review the evidence provided on the statement of water user's claim and make a recommendation to the Court with regard to the validity of the claim. Utah Code § 73-4-5(1)(g) outlines the evidentiary requirements associated with documenting claims to rights not of record. In addition to information included on the water user's claim form, claimants are required to provide sufficient evidence to enable the State Engineer to evaluate the basis of the claimed right, including the following information:

- Affidavits setting forth facts of which the affiant has personal knowledge.
- Authenticated or historic photographs, plat or survey maps, or surveyors' notes.
- Authenticated copies of original diaries, personal histories, or other historical documents that document the claimed use of water.
- Other relevant records on file with any county recorder's, surveyor's, or assessor's office.

The claimant submitting a water user's claim for a right not of record should provide documentation quantifying the extent of the right claimed and establishing that he/she is the successor in interest to the person who originally put the water to use. Adequate documentation would include land and water deeds that document the transfer of the claimed right from the person who initiated the use to the current claimant. Claims for uses that are no longer occurring will be critically reviewed by the State Engineer and—where not excused by statute—recommended for forfeiture.

Although not required, it is highly recommended that claimants utilize the services of a competent water rights professional in preparing their water user's claim for a right not of record.

**The State Engineer's recommendation pertaining to the validity of the pre-statutory claim will be based on a review and investigation of the evidence provided by the claimant with their water user's claim. Consequently, it is the responsibility of the claimant to provide sufficient evidence to substantiate pre-statutory use, otherwise the respective water user's claim will be recommended to be disallowed by the State Engineer in the general adjudication.**