

Water Rights - Nonuse Applications

Resolving Conflict / Securing a Future

What is Behind this Bill?

The concepts behind this bill were developed by a committee formed by the Executive Water Task Force in 2015. The state engineer brought to the attention of the task force that some water right owners may be using nonuse applications as a vehicle to legitimize water rights which have long not been used and would otherwise be subject to forfeiture. Resurrecting these rights using non-use filings would pose major problems for other, legitimate water rights and water users. During the 2016 legislature the issue was addressed in part in HB222, which clarified that a nonuse application is not the same as beneficial use of water but failed to address practically the interface between nonuse applications, prior nonuse, and a statute which limits the period which can be considered in suits which allege forfeiture of a water right for nonuse. The Executive Water Task Force voted unanimously to support the concepts in this bill.

Background

Changes made to the water right forfeiture statute (Utah Code Section 73-1-4) in 2008 drastically altered the operation of nonuse applications and provisions under which a water right is subject to forfeiture. While the 2008 changes were designed to protect water users from inadvertent forfeiture, the law inadvertently created a loophole whereby a person could file multiple nonuse applications and claim that, under the law, these paper filings—rather than actual use of the water—constituted beneficial use of water sufficient to restore the right.

Issues

In the course of its investigation, the Task Force found that successive nonuse applications could be used to inoculate against past nonuse because the language of the so called “Lazarus Provision” allows water rights to escape assertions of forfeiture for nonuse which occurred over 15 years in the past. The Task Force explored extensive revision of the forfeiture statute to address the issue, but at length settled on a simpler solution that is reflected in this bill.

Proposed Revisions

The bill extends the lookback period that can be examined for forfeiture by 7 years for each nonuse application approved (nonuse applications have an effective period of 7 years). This has the practical effect of preventing someone from using paper filings (in lieu of actually putting water to beneficial use) to resurrect a water right by operation of the Lazarus Provision. Doing so protects all water users and other water rights from those who would exploit a loophole in the statutory framework that governs forfeiture.

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