

**WATER AMENDMENTS FOR INSTITUTIONS OF HIGHER
EDUCATION**

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends definitions related to a public water supplier.

Highlighted Provisions:

This bill:

- ▶ provides that an institution of higher education using the institution of higher education's water rights for certain uses is a public water supplier; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-4, as last amended by Laws of Utah 2017, Chapter 132

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **73-1-4** is amended to read:

73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Nonuse application.



28 (1) As used in this section:

29 (a) "Institution of higher education" means an institution that is part of the Utah System
30 of Higher Education described in Section 53B-1-102.

31 (b) "Public entity" means:

32 (i) the United States;

33 (ii) an agency of the United States;

34 (iii) the state;

35 (iv) a state agency;

36 (v) a political subdivision of the state; [~~or~~]

37 (vi) an agency of a political subdivision of the state[~~;~~]; or

38 (vii) an institution of higher education.

39 [~~(b)~~] (c) "Public water supplier" means an entity that:

40 (i) (A) supplies water, directly or indirectly, to the public for municipal, domestic, or
41 industrial use; [~~and~~] or

42 (B) is an institution of higher education that uses the institution's water rights on the
43 institution's campus for municipal, domestic, or industrial purposes; and

44 (ii) is:

45 (A) a public entity;

46 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public
47 Service Commission;

48 (C) a community water system:

49 (I) that:

50 (Aa) supplies water to at least 100 service connections used by year-round residents; or

51 (Bb) regularly serves at least 200 year-round residents; and

52 (II) whose voting members:

53 (Aa) own a share in the community water system;

54 (Bb) receive water from the community water system in proportion to the member's
55 share in the community water system; and

56 (Cc) pay the rate set by the community water system based on the water the member
57 receives; or

58 (D) a water users association:

59 (I) in which one or more public entities own at least 70% of the outstanding shares; and
60 (II) that is a local sponsor of a water project constructed by the United States Bureau of
61 Reclamation.

62 ~~[(c)]~~ (d) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

63 ~~[(d)]~~ (e) "Water company" means the same as that term is defined in Section 73-3-3.5.

64 ~~[(e)]~~ (f) "Water supply entity" means an entity that supplies water as a utility service or
65 for irrigation purposes and is also:

66 (i) a municipality, water conservancy district, metropolitan water district, irrigation
67 district, or other public agency;

68 (ii) a water company regulated by the Public Service Commission; or

69 (iii) any other owner of a community water system.

70 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
71 appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a
72 water right for a period of at least seven years, the water right or the unused portion of that
73 water right is subject to forfeiture in accordance with Subsection (2)(c).

74 (b) (i) An appropriator or the appropriator's successor in interest may file an
75 application for nonuse with the state engineer.

76 (ii) A nonuse application may be filed on all or a portion of the water right, including
77 water rights held by a water company.

78 (iii) After giving written notice to the water company, a shareholder may file a nonuse
79 application with the state engineer on the water represented by the stock.

80 (iv) (A) The approval of a nonuse application excuses the requirement of beneficial use
81 of water from the date of filing.

82 (B) The time during which an approved nonuse application is in effect does not count
83 toward the seven-year period described in Subsection (2)(a).

84 (v) The filing or approval of a nonuse application or a series of nonuse applications
85 under Subsection (3) does not:

86 (A) constitute beneficial use of a water right;

87 (B) protect a water right that is already subject to forfeiture under this section; or

88 (C) bar a water right owner from:

89 (I) using the water under the water right as permitted under the water right; or

90 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided
91 by law.

92 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the
93 water right may not be forfeited unless a judicial action to declare the right forfeited is
94 commenced:

95 (A) within 15 years from the end of the latest period of nonuse of at least seven years;
96 or

97 (B) within the combined time of 15 years from the end of the most recent period of
98 nonuse of at least seven years and the time the water right was subject to one or more nonuse
99 applications.

100 (ii) (A) The state engineer, in a proposed determination of rights filed with the court
101 and prepared in accordance with Section 73-4-11, may not assert that a water right was
102 forfeited unless the most recent period of nonuse of seven years ends or occurs:

103 (I) during the 15 years immediately preceding the day on which the state engineer files
104 the proposed determination of rights with the court; or

105 (II) during the combined time immediately preceding the day on which the state
106 engineer files the proposed determination of rights consisting of 15 years and the time the
107 water right was subject to one or more approved nonuse applications.

108 (B) After the day on which a proposed determination of rights is filed with the court a
109 person may not assert that a water right subject to that determination was forfeited before the
110 issuance of the proposed determination, unless the state engineer asserts forfeiture in the
111 proposed determination, or a person, in accordance with Section 73-4-11, makes an objection
112 to the proposed determination that asserts forfeiture.

113 (iii) A water right, found to be valid in a decree entered in an action for general
114 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
115 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
116 engineer filed the related proposed determination of rights with the court, unless the decree
117 provides otherwise.

118 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
119 the water right is forfeited:

120 (A) the right to beneficially use the water reverts to the public; and

- 121 (B) the water made available by the forfeiture:
- 122 (I) first, satisfies other water rights in the hydrologic system in order of priority date;
- 123 and
- 124 (II) second, may be appropriated as provided in this title.
- 125 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or
- 126 abandoned water or a portion of the water is:
- 127 (i) permitted to run to waste; or
- 128 (ii) beneficially used by others without right with the knowledge of the water right
- 129 holder.
- 130 (e) This section does not apply to:
- 131 (i) the beneficial use of water according to a lease or other agreement with the
- 132 appropriator or the appropriator's successor in interest;
- 133 (ii) a water right if its place of use is contracted under an approved state agreement or
- 134 federal conservation fallowing program;
- 135 (iii) those periods of time when a surface water or groundwater source fails to yield
- 136 sufficient water to satisfy the water right;
- 137 (iv) a water right when water is unavailable because of the water right's priority date;
- 138 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
- 139 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
- 140 (A) the water is stored for present or future beneficial use; or
- 141 (B) storage is limited by a safety, regulatory, or engineering restraint that the
- 142 appropriator or the appropriator's successor in interest cannot reasonably correct;
- 143 (vi) a water right if a water user has beneficially used substantially all of the water right
- 144 within a seven-year period, provided that this exemption does not apply to the adjudication of a
- 145 water right in a general determination of water rights under Chapter 4, Determination of Water
- 146 Rights;
- 147 (vii) except as provided by Subsection (2)(g), a water right:
- 148 (A) (I) owned by a public water supplier;
- 149 (II) represented by a public water supplier's ownership interest in a water company; or
- 150 (III) to which a public water supplier owns the right of beneficial use; and
- 151 (B) conserved or held for the reasonable future water requirement of the public, which

152 is determined according to Subsection (2)(f);

153 (viii) a supplemental water right during a period of time when another water right
154 available to the appropriator or the appropriator's successor in interest provides sufficient water
155 so as to not require beneficial use of the supplemental water right; or

156 (ix) a period of nonuse of a water right during the time the water right is subject to an
157 approved change application where the applicant is diligently pursuing certification.

158 (f) (i) The reasonable future water requirement of the public is the amount of water
159 needed in the next 40 years by:

160 (A) the persons within the public water supplier's reasonably anticipated service area
161 based on reasonably anticipated population growth; or

162 (B) other water use demand.

163 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably
164 anticipated service area:

165 (A) is the area served by the community water system's distribution facilities; and

166 (B) expands as the community water system expands the distribution facilities in
167 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

168 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
169 Subsection (2)(e)(vii) applies if:

170 (i) the public water supplier submits a change application under Section 73-3-3; and

171 (ii) the state engineer approves the change application.

172 (3) (a) The state engineer shall furnish a nonuse application form requiring the
173 following information:

174 (i) the name and address of the applicant;

175 (ii) a description of the water right or a portion of the water right, including the point of
176 diversion, place of use, and priority;

177 (iii) the quantity of water;

178 (iv) the period of use;

179 (v) the extension of time applied for;

180 (vi) a statement of the reason for the nonuse of the water; and

181 (vii) any other information that the state engineer requires.

182 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the

183 application once a week for two successive weeks:

184 (A) in a newspaper of general circulation in the county in which the source of the water
185 supply is located and where the water is to be beneficially used; and

186 (B) as required in Section 45-1-101.

187 (ii) The notice shall:

188 (A) state that an application has been made; and

189 (B) specify where the interested party may obtain additional information relating to the
190 application.

191 (c) Any interested person may file a written protest with the state engineer against the
192 granting of the application:

193 (i) within 20 days after the notice is published, if the adjudicative proceeding is
194 informal; and

195 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
196 formal.

197 (d) In any proceedings to determine whether the nonuse application should be
198 approved or rejected, the state engineer shall follow the procedures and requirements of Title
199 63G, Chapter 4, Administrative Procedures Act.

200 (e) After further investigation, the state engineer may approve or reject the application.

201 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
202 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
203 for nonuse.

204 (b) A reasonable cause for nonuse includes:

205 (i) a demonstrable financial hardship or economic depression;

206 (ii) physical causes or changes that render use beyond the reasonable control of the
207 water right owner so long as the water right owner acts with reasonable diligence to resume or
208 restore the use;

209 (iii) the initiation of water conservation or efficiency practices, or the operation of a
210 groundwater recharge recovery program approved by the state engineer;

211 (iv) operation of legal proceedings;

212 (v) the holding of a water right or stock in a mutual water company without use by any
213 water supply entity to meet the reasonable future requirements of the public;

214 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
215 implementing an existing, approved water management plan; or

216 (vii) the loss of capacity caused by deterioration of the water supply or delivery
217 equipment if the applicant submits, with the application, a specific plan to resume full use of
218 the water right by replacing, restoring, or improving the equipment.

219 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
220 notify the applicant by mail or by any form of electronic communication through which receipt
221 is verifiable, of the date when the nonuse application will expire.

222 (b) An applicant may file a subsequent nonuse application in accordance with this
223 section.