

WATER USER NOTIFICATION AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael R. Styler

This act modifies the Water and Irrigation Code by changing certain water rights notification requirements.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

73-1-4, as last amended by Chapter 20, Laws of Utah 2002

73-3-6, as last amended by Chapter 19, Laws of Utah 1995

73-3-12, as last amended by Chapter 136, Laws of Utah 2001

73-3a-107, as last amended by Chapter 19, Laws of Utah 1995

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 five years -- Extension of time.

(1) In order to further the state policy of securing the maximum use and benefit of its scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use. The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts. The provisions of Subsections (2) through (6) shall be construed to carry out the purposes and policies set forth in this Subsection (1).

(2) As used in this section, "public water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

- (a) a municipality, water conservancy district, metropolitan water district, irrigation district created under [~~Section 17A-2-7~~] Section 17A-2-701.5, or other public agency;
- (b) a water company regulated by the Public Service Commission; or
- (c) any other owner of a community water system.

(3) (a) When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of five years, the water right or the unused portion of that water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified nonuse application with the state engineer.

(b) (i) A nonuse application may be filed on all or a portion of the water right, including water rights held by mutual irrigation companies.

(ii) Public water supply entities that own stock in a mutual water company, after giving written notice to the water company, may file nonuse applications with the state engineer on the water represented by the stock.

(c) (i) A water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that occur after the entry of the decree.

(iv) A proposed determination by the state engineer in an action for general determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has been filed within the time allowed in Chapter 4, Determination of Water Rights.

(d) The extension of time to resume the use of that water may not exceed five years unless the time is further extended by the state engineer.

(e) The provisions of this section are applicable whether the unused or abandoned water

or a portion of the water is permitted to run to waste or is used by others without right with the knowledge of the water right holder, provided that the use of water pursuant to a lease or other agreement with the appropriator or the appropriator's successor shall be considered to constitute beneficial use.

(f) The provisions of this section shall not apply:

(i) to those periods of time when a surface water source fails to yield sufficient water to satisfy the water right, or when groundwater is not available because of a sustained drought;

(ii) to water stored in reservoirs pursuant to an existing water right, where the stored water is being held in storage for present or future use; or

(iii) when a water user has beneficially used substantially all of a water right within a five-year period, provided that this exemption shall not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights.

(g) Groundwater rights used to supplement the quantity or quality of other water supplies may not be subject to loss or reduction under this section if not used during periods when the other water source delivers sufficient water so as to not require use of the supplemental groundwater.

(4) (a) The state engineer shall furnish an application requiring the following information:

(i) the name and address of the applicant;

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

(iii) the date the water was last diverted and placed to beneficial use;

(iv) the quantity of water;

(v) the period of use;

(vi) the extension of time applied for;

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

(viii) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the

state engineer issues his order on the nonuse application.

(c) (i) Upon receipt of the application, the state engineer shall publish[;] a notice of the application once a week for two successive weeks[; ~~a notice of the application~~] in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice shall [~~inform the public of the nature of the right for which the extension is requested and the reasons for the extension.~~];

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

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

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

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

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

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

(5) (a) Nonuse applications on all or a portion of a water right shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

- (i) demonstrable financial hardship or economic depression;
- (ii) the initiation of recognized water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;
- (iii) operation of legal proceedings;
- (iv) the holding of a water right or stock in a mutual water company without use by any

public water supply entity to meet the reasonable future requirements of the public;

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

(vi) situations where all or part of the land on which water is used is contracted under an approved state agreement or federal conservation following program;

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

(viii) any other reasonable cause.

(6) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable, of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(c) Upon receipt of the applicant's properly completed, verified statement, the state engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if so, shall issue a certificate of resumption of use of the water as evidenced by the resumed beneficial use.

(7) The appropriator's water right or a portion of the water right ceases and the water reverts to the public if the:

(a) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(b) state engineer denies the nonuse application; or

(c) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

Section 2. Section **73-3-6** is amended to read:

73-3-6. Publication of notice of application -- Corrections or amendments of applications.

(1) (a) When an application is filed in compliance with this title, the state engineer shall publish~~[;]~~ a notice of the application once a week for a period of two successive weeks~~[; a notice of the application informing the public of the contents of the application and the proposed plan of development]~~ in a newspaper of general circulation in the county in which the source of supply is located, and where the water is to be used.

~~[(b) (i) The state engineer shall publish the notice in a newspaper of general circulation in the county in which the source of supply is located, and where the water is to be used.]~~

~~[(ii) The notice may be published in more than one newspaper.]~~

(b) The notice shall:

(i) state that an application has been made; and

(ii) specify where the interested party may obtain additional information relating to the application.

(c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.

(2) After publication of notice to water users, the state engineer may authorize amendments or corrections that involve a change of point of diversion, place, or purpose of use of water, only after republication of notice to water users.

Section 3. Section **73-3-12** is amended to read:

73-3-12. Time limit on construction and application to beneficial use -- Extensions -- Procedures and criteria.

(1) As used in this section, "public agency" means a public water supply agency of:

(a) the state; or

(b) a political subdivision of the state.

(2) (a) The construction of the works and the application of water to beneficial use shall be diligently prosecuted to completion within the time fixed by the state engineer.

(b) Extensions of time, not exceeding 50 years from the date of approval of the application, except as provided in Subsection (2)(c), may be granted by the state engineer on proper showing of diligence or reasonable cause for delay.

(c) Additional extensions of time, beyond 50 years, may be granted by the state engineer on applications held by any public agency, if the public agency can demonstrate the water will be needed to meet the reasonable future requirements of the public.

(d) All requests for extension of time shall be made by signed statement and shall be filed in the office of the state engineer on or before the date fixed for filing proof of appropriation.

(e) Extensions not exceeding 14 years after the date of approval may be granted by the state engineer upon a sufficient showing by signed statement, but extensions beyond 14 years shall be granted only after application and publication of notice.

(f) (i) (A) The state engineer shall publish a notice of the application once ~~each~~ a week for two successive weeks, in a newspaper of general circulation, in the county in which the source of the water supply is located and where the water is to be used.

~~[(B) The notice may be published in more than one newspaper.]~~

~~[(ii) (B) The notice shall [inform the public of the diligence claimed and the reason for the request.]:~~

(I) state that an application has been made; and

(II) specify where the interested party may obtain additional information relating to the application.

(g) Any person who owns a water right from the source of supply referred to in Subsection (2)(f) or holds an application from that source of supply may file a protest with the state engineer:

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

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

(h) In considering an application to extend the time in which to place water to beneficial

use under an approved application, the state engineer shall deny the extension and declare the application lapsed, unless the applicant affirmatively shows that the applicant has exercised or is exercising reasonable and due diligence in working toward completion of the appropriation.

(i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall approve the extension.

(ii) The approved extension is effective so long as the applicant continues to exercise reasonable diligence in completing the appropriation.

(j) The state engineer shall consider the holding of an approved application by any public agency to meet the reasonable future requirements of the public to be reasonable and due diligence within the meaning of this section for the first 50 years. The state engineer may approve extensions beyond 50 years for a public agency, if the agency provides information sufficient to demonstrate the water will be needed to meet the reasonable future requirements of the public.

(k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the works to completion, the state engineer may deny the extension or may grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.

(3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which proof has not been submitted shall lapse and have no further force or effect after the expiration of 50 years from the date of its approval.

(b) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year period in which to make proof.

(c) An application held by a public agency to meet the reasonable future requirements of the public, for which proof of appropriation has not been submitted, shall lapse, unless extended as provided in Subsection (2)(j).

Section 4. Section **73-3a-107** is amended to read:

73-3a-107. Publication of notice of application -- Corrections or amendments of applications.

(1) (a) When an application is filed in accordance with Section 73-3a-106 and relevant provisions of [~~Title 73;~~] Chapter 3, Appropriation, the state engineer shall publish a notice of the application once a week for a period of two successive weeks [~~a notice of the application informing the public of the contents of the application~~] in a newspaper of general circulation in the county in which the water source is located and where the water is to be used.

~~[(b) (i) The state engineer shall publish the notice in a newspaper of general circulation in the county in which the water source is located and where the water is to be used.]~~

(b) The notice shall:

(i) state that an application has been made; and

(ii) specify where the interested party may obtain additional information relating to the application.

~~[(ii)]~~ (c) The notice may be published in more than one newspaper.

(2) Clerical errors, ambiguities, and mistakes in the application that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.

(3) If amendments or corrections to the application are made that involve a change of point of diversion, place of use, or purpose of use of water, the notice must be republished.