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WATER RIGHT AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill protects specific entities from forfeiting a water right because of nonuse.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the nonuse period of a water right from five to seven years;
- ▶ clarifies the forfeiture procedure and the distribution of water after a forfeiture;
- ▶ allows a shareholder to file a nonuse application;

- 37 ▶ protects a water right from forfeiture if:
- 38 • a public water supplier holds the water for the reasonable future water
- 39 requirements of the public and in some cases, receives approval of a change
- 40 application;
- 41 • the land where the water is used is under a fallowing program;
- 42 • water is not available because of distribution based on priority date;
- 43 • the water is stored in an aquifer;
- 44 • a storage water right is not used in certain circumstances; and
- 45 • another water source is available for the beneficial use;
- 46 ▶ establishes how the reasonable future water requirements of the public are
- 47 determined;
- 48 ▶ describes how a community water system's projected service area is determined;
- 49 ▶ changes the requirements for a nonuse application;
- 50 ▶ clarifies the effect of a nonuse application;
- 51 ▶ allows an applicant to file a subsequent nonuse application;
- 52 ▶ authorizes the state engineer to use fees to hire staff; and
- 53 ▶ makes technical changes.

54 Monies Appropriated in this Bill:

55 None

56 Other Special Clauses:

57 None

58 Utah Code Sections Affected:

59 AMENDS:

60 **73-1-4**, as last amended by Laws of Utah 2007, Chapters 136 and 329

61 **73-2-14**, as last amended by Laws of Utah 2007, Chapter 314



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

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

65 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
66 **seven years -- Nonuse application.**

67 ~~[(1)(a) In order to further the state policy of securing the maximum use and benefit of~~
68 ~~its scarce water resources, a person entitled to the use of water has a continuing obligation to~~
69 ~~place all of a water right to beneficial use.]~~

70 ~~[(b) The forfeiture of all or part of any right to use water for failure to place all or part~~
71 ~~of the water to beneficial use makes possible the allocation and use of water consistent with~~
72 ~~long established beneficial use concepts.]~~

73 ~~[(c) The provisions of Subsections (2) through (6) shall be construed to carry out the~~
74 ~~purposes and policies set forth in this Subsection (1).]~~

75 ~~[(2)]~~ (1) As used in this section[, "public water"]:

76 (a) "Public entity" means:

77 (i) the United States;

78 (ii) an agency of the United States;

79 (iii) the state;

80 (iv) a state agency;

81 (v) a political subdivision of the state; or

82 (vi) an agency of a political subdivision of the state.

83 (b) "Public water supplier" means an entity that:

84 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
85 industrial use; and

86 (ii) is:

87 (A) a public entity;

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

90 (C) a community water system;

91 (I) that:

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

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

94 (II) whose voting members:

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

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

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

100 (D) a water users association:

101 (I) in which one or more public entities own at least 70% of the outstanding shares; and

102 (II) that is a local sponsor of a water project constructed by the United States Bureau
103 of Reclamation.

104 (c) "Shareholder" is as defined in Section 73-3-3.5.

105 (d) "Water company" is as defined in Section 73-3-3.5.

106 (e) "Water supply entity" means an entity that supplies water as a utility service or for
107 irrigation purposes and is also:

108 ~~[(a)]~~ (i) a municipality, water conservancy district, metropolitan water district, irrigation
109 district, or other public agency;

110 ~~[(b)]~~ (ii) a water company regulated by the Public Service Commission; or

111 ~~[(c)]~~ (iii) any other owner of a community water system.

112 ~~[(3)]~~ (2) (a) When an appropriator or the appropriator's successor in interest abandons
113 or ceases to use all or a portion of a water right for a period of ~~[five]~~ seven years, the water
114 right or the unused portion of that water right ~~[ceases and the water reverts to the public] is~~
115 subject to forfeiture in accordance with Subsection (2)(c), unless~~[-, before the expiration of the~~
116 ~~five-year period;~~ the appropriator or the appropriator's successor in interest files a ~~[verified]~~
117 nonuse application with the state engineer.

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

120 (ii) ~~[Public water supply entities that own stock in a mutual water company, after] After~~

121 giving written notice to the water company, a shareholder may file a nonuse [~~applications~~
122 application with the state engineer on the water represented by the stock.

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

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

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

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

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

140 [~~(e) The provisions of this section are applicable]~~

141 (v) If in a judicial action a court declares a water right forfeited, on the date on which
142 the water right is forfeited:

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

144 (B) the water made available by the forfeiture:

145 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

146 and

147 (II) second, may be appropriated as provided in this title.

148 (d) This section applies whether the unused or abandoned water or a portion of the

149 water is;

150 (i) permitted to run to waste; or [is]

151 (ii) used by others without right with the knowledge of the water right holder[;

152 provided that the use of water pursuant to a lease or other agreement with the appropriator or
153 the appropriator's successor shall be considered to constitute beneficial use].

154 [(f)] (e) [The provisions of this] This section [shall] does not apply to:

155 (i) the use of water according to a lease or other agreement with the appropriator or the
156 appropriator's successor in interest;

157 (ii) a water right if its place of use is contracted under an approved state agreement or
158 federal conservation following program;

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

162 (iv) a water right when water is unavailable because of the water right's priority date;

163 [(ii)] (v) [to water stored in reservoirs pursuant to an existing water right, where] a
164 water right to store water in a surface reservoir or an aquifer, in accordance with Title 73,
165 Chapter 3b, Groundwater Recharge and Recovery Act, if:

166 (A) the [stored] water is [being held in storage] stored for present or future use; or

167 (B) storage is limited by a safety, regulatory, or engineering restraint that the
168 appropriator or the appropriator's successor in interest cannot reasonably correct;

169 [(iii) when] (vi) a water right if a water user has beneficially used substantially all of [a]
170 the water right within a [five] seven-year period, provided that this exemption [shall] does not
171 apply to the adjudication of a water right in a general determination of water rights under
172 Chapter 4, Determination of Water Rights[-];

173 (vii) except as provided by Subsection (2)(g), a water right:

174 (A) (I) owned by a public water supplier;

175 (II) represented by a public water supplier's ownership interest in a water company; or

176 (III) to which a public water supplier owns the right of use; and

177 (B) conserved or held for the reasonable future water requirement of the public, which
178 is determined according to Subsection (2)(f);

179 ~~[(g)] (viii) [Groundwater rights used to supplement the quantity or quality of other~~
180 ~~water supplies may not be subject to loss or reduction under this section if not used] a~~
181 supplemental water right during [periods] a period of time when [the other water source
182 delivers sufficient water] another water right available to the appropriator or the appropriator's
183 successor in interest provides sufficient water so as to not require use of the supplemental
184 [groundwater.] water right; or

185 (ix) a water right subject to an approved change application where the applicant is
186 diligently pursuing certification.

187 (f) (i) The reasonable future water requirement of the public is the amount of water
188 needed in the next 40 years by the persons within the public water supplier's projected service
189 area based on projected population growth or other water use demand.

190 (ii) For purposes of Subsection (2)(f)(i), a community water system's projected service
191 area:

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

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

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

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

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

199 ~~[(4)]~~ (3) (a) The state engineer shall furnish [an] a nonuse application form requiring the
200 following information:

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

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

204 ~~[(iii) the date the water was last diverted and placed to beneficial use;]~~

205 [~~(iv)~~] (iii) the quantity of water;

206 [~~(v)~~] (iv) the period of use;

207 [~~(vi)~~] (v) the extension of time applied for;

208 [~~(vii)~~] (vi) a statement of the reason for the nonuse of the water; and

209 [~~(viii)~~] (vii) any other information that the state engineer requires.

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

211 until the state engineer issues [~~his~~] an order on the nonuse application.

212 (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse

213 from the application's filing date until the approved application's expiration date.

214 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the

215 application once a week for two successive weeks in a newspaper of general circulation in the

216 county in which the source of the water supply is located and where the water is to be used.

217 (ii) The notice shall:

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

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

220 application.

221 (d) Any interested person may file a written protest with the state engineer against the

222 granting of the application:

223 (i) within 20 days after the notice is published, if the adjudicative proceeding is

224 informal; and

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

226 (e) In any proceedings to determine whether the nonuse application [~~for extension~~]

227 should be approved or rejected, the state engineer shall follow the procedures and requirements

228 of Title 63, Chapter 46b, Administrative Procedures Act.

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

230 [~~(5)~~] (4) (a) [~~Nonuse applications~~] The state engineer shall grant a nonuse application

231 on all or a portion of a water right [shall be granted by the state engineer for periods] for a

232 period of time not exceeding [~~five~~] seven years [~~each, upon a showing of~~] if the applicant shows

233 a reasonable cause for nonuse.

234 (b) ~~[Reasonable causes]~~ A reasonable cause for nonuse ~~[include]~~ includes:

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

236 (ii) the initiation of ~~[recognized]~~ water conservation or efficiency practices, or the
237 operation of a groundwater recharge recovery program approved by the state engineer;

238 (iii) operation of legal proceedings;

239 (iv) the holding of a water right or stock in a mutual water company without use by any
240 ~~[public]~~ water supply entity to meet the reasonable future requirements of the public;

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

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

245 ~~[(vii)]~~ (vi) the loss of capacity caused by deterioration of the water supply or delivery
246 equipment if the applicant submits, with the application, a specific plan to resume full use of the
247 water right by replacing, restoring, or improving the equipment~~[-or].~~

248 ~~[(viii) any other reasonable cause.]~~

249 ~~[(6)]~~ (5) (a) Sixty days before the expiration of ~~[any extension of time]~~ a nonuse
250 application, the state engineer shall notify the applicant by mail or by any form of electronic
251 communication through which receipt is verifiable, of the date when the ~~[extension period]~~
252 nonuse application will expire.

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

255 ~~[(b) Before the date of expiration, the applicant shall either:]~~

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

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

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

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

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

269 ~~[(b) state engineer denies the nonuse application; or]~~

270 ~~[(c) appropriator or the appropriator's successor in interest fails to apply for a further~~
271 ~~extension of time;]~~

272 Section 2. Section **73-2-14** is amended to read:

273 **73-2-14. Fees of state engineer -- Deposited as a dedicated credit.**

274 (1) The state engineer shall charge fees pursuant to Section 63-38-3.2 for the following:

275 (a) applications to appropriate water;

276 (b) applications to temporarily appropriate water;

277 (c) applications for permanent or temporary change;

278 (d) applications for exchange;

279 (e) applications for an extension of time in which to resume use of water;

280 (f) applications to appropriate water, or make a permanent or temporary change, for
281 use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;

282 (g) groundwater recovery permits;

283 (h) diligence claims for surface or underground water filed pursuant to Section 73-5-13;

284 (i) republication of notice to water users after amendment of application where required
285 by this title;

286 (j) applications to segregate;

287 (k) requests for an extension of time in which to submit proof of appropriation not to
288 exceed 14 years after the date of approval of the application;

- 289 (1) requests for an extension of time in which to submit proof of appropriation 14 years
290 or more after the date of approval of the application;
- 291 (m) groundwater recharge permits;
- 292 (n) applications for a well driller's license, annual renewal of a well driller's license, and
293 late annual renewal of a well driller's license;
- 294 (o) certification of copies;
- 295 (p) preparing copies of documents; and
- 296 (q) reports of water right conveyance.
- 297 (2) Fees for the services specified in Subsections (1)(a) through (i) shall be based upon
298 the rate of flow or volume of water. If it is proposed to appropriate by both direct flow and
299 storage, the fee shall be based upon either the rate of flow or annual volume of water stored,
300 whichever fee is greater.
- 301 (3) Fees collected under this section:
- 302 (a) shall be deposited in the General Fund as a dedicated credit to be used by the
303 Division of Water Rights; and
- 304 (b) may only be used by the Division of Water Rights to:
- 305 (i) meet the publication of notice requirements under this title; [~~and~~]
- 306 (ii) process reports of water right conveyance[-]; and
- 307 (iii) hire an employee to assist with processing an application.