

Representative Patrick Painter proposes the following substitute bill:

WATER RIGHT FORFEITURE PROTECTION

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill protects specific entities from forfeiture of water rights for 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 forfeited water;
- ▶ allows a shareholder to file a nonuse application;
- ▶ protects a water right from forfeiture if:
 - a public water supplier holds the water for the reasonable future water requirements of the public;
 - the land where the water is used is under a fallowing program;
 - water is not available because of distribution based on priority date;
 - the water is stored in an aquifer;
 - a storage water right is not used in certain circumstances; and
 - another water source is available for the beneficial use;
- ▶ establishes how the reasonable future water requirements of the public are

determined;



- 26 ▶ describes how a water community system's projected service area is determined;
- 27 ▶ changes the requirements for a nonuse application;
- 28 ▶ clarifies the effect of a nonuse application;
- 29 ▶ allows an applicant to file a subsequent nonuse application; and
- 30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **73-1-4**, as last amended by Laws of Utah 2007, Chapters 136 and 329



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

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

41 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
42 **seven years -- Extension of time.**

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

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

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

51 [~~(2)~~] (1) As used in this section[, "public water supply entity"]:

52 (a) "Public entity" means:

53 (i) the United States;

54 (ii) an agency of the United States;

55 (iii) the state;

56 (iv) a state agency;

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

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

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

60 (i) supplies water [as a utility service or for irrigation purposes and is also:], directly or
61 indirectly, to the public for municipal, domestic, or industrial use; and

62 (ii) is:

63 [~~(a)~~] (A) a [~~municipality, water conservancy district, metropolitan water district,~~
64 ~~irrigation district, or other public agency~~] public entity;

65 [~~(b)~~] (B) a water [~~company regulated~~] corporation, as defined in Section 54-2-1, that is
66 regulated by the Public Service Commission; [~~or~~]

67 [~~(c) any other owner of~~] (C) a community water system[~~:-~~];

68 (I) that:

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

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

71 (II) whose voting members:

72 (Aa) hold a share in the community water system;

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

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

77 (D) a water users association:

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

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

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

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

83 [~~(3)~~] (2) (a) When an appropriator or the appropriator's successor in interest abandons
84 or ceases to use all or a portion of a water right for a period of [~~five~~] seven years, the water
85 right or the unused portion of that water right [~~ceases and the water reverts to the public~~] is
86 subject to forfeiture in accordance with Subsection (2)(c), unless[~~, before the expiration of the~~
87 ~~five-year period;~~] the appropriator or the appropriator's successor in interest files a [~~verified~~]

88 nonuse application with the state engineer.

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

91 (ii) ~~[Public water supply entities that own stock in a mutual water company, after]~~
92 After giving written notice to the water company, a shareholder may file a nonuse
93 [applications] application with the state engineer on the water represented by the stock.

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

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

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

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

109 (v) (A) Water made available by a judicial action forfeiting a water right is first
110 distributed to a person with a right to use water from the water source based on priority date.

111 (B) Water that is not distributed in accordance with Subsection (2)(c)(v)(A):

112 (I) reverts to the public; and

113 (II) is available for appropriation from the water source.

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

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

117 (d) This section applies whether the unused or abandoned water or a portion of the
118 water is;

119 (i) permitted to run to waste; or ~~its~~
120 (ii) used by others without right with the knowledge of the water right holder[;
121 provided that the use of water pursuant to a lease or other agreement with the appropriator or
122 the appropriator's successor shall be considered to constitute beneficial use].
123 ~~[(f)]~~ (e) ~~[The provisions of this]~~ This section ~~[shall]~~ does not apply to:
124 (i) the use of water according to a lease or other agreement with the appropriator or the
125 appropriator's successor in interest;
126 (ii) a water right if its place of use is contracted under an approved state agreement or
127 federal conservation following program;
128 ~~[(i) to]~~ (iii) those periods of time when a surface water or groundwater source fails to
129 yield sufficient water to satisfy the water right[, or when groundwater is not available because
130 of a sustained drought];
131 (iv) a water right when water is unavailable because of the water right's priority date;
132 ~~[(ii)]~~ (v) ~~[to water stored in reservoirs pursuant to an existing water right, where]~~ a
133 water right to store water in a surface reservoir or an aquifer, in accordance with Title 73,
134 Chapter 3b, Groundwater Recharge and Recovery Act, if:
135 (A) the ~~[stored]~~ water is ~~[being held in storage]~~ stored for present or future use; or
136 (B) storage is limited by a safety, regulatory, or engineering restraint that the
137 appropriator or the appropriator's successor in interest cannot reasonably correct;
138 ~~[(iii) when]~~ (vi) a water right if a water user has beneficially used substantially all of
139 ~~[a]~~ the water right within a ~~[five]~~ seven-year period, provided that this exemption ~~[shall]~~ does
140 not apply to the adjudication of a water right in a general determination of water rights under
141 Chapter 4, Determination of Water Rights[-];
142 (vii) a water right:
143 (A) (I) owned by a public water supplier;
144 (II) represented by a public water supplier's ownership interest in a water company; or
145 (III) to which a public water supplier owns the right of use; and
146 (B) conserved or held for the reasonable future water requirement of the public, which
147 is determined according to Subsection (2)(f);
148 ~~[(g)]~~ (viii) ~~[Groundwater rights used to supplement the quantity or quality of other~~
149 ~~water supplies may not be subject to loss or reduction under this section if not used]~~ a

150 supplemental water right during [periods] a period of time when [the other water source
151 delivers sufficient water] another water right available to the appropriator or the appropriator's
152 successor in interest provides sufficient water so as to not require use of the supplemental
153 [groundwater:] water right; or

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

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

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

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

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

164 ~~[(4)]~~ (3) (a) The state engineer shall furnish [an] a nonuse application form requiring
165 the following information:

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

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

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

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

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

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

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

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

175 (b) (i) Filing the nonuse application extends the time during which nonuse may
176 continue until the state engineer issues [his] an order on the nonuse application.

177 (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse
178 from the application's filing date until the approved application's expiration date.

179 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
180 application once a week for two successive weeks in a newspaper of general circulation in the

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

182 (ii) The notice shall:

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

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

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

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

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

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

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

196 [~~(5)~~] (4) (a) [~~Nonuse applications~~] The state engineer shall grant a nonuse application
197 on all or a portion of a water right [shall be granted by the state engineer for periods] for a
198 period of time not exceeding [five] seven years [each, upon a showing of] if the applicant
199 shows a reasonable cause for nonuse.

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

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

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

204 (iii) operation of legal proceedings;

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

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

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

211 [~~(vii)~~] (vi) the loss of capacity caused by deterioration of the water supply or delivery

212 equipment if the applicant submits, with the application, a specific plan to resume full use of
213 the water right by replacing, restoring, or improving the equipment[~~;~~or].

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

215 [~~(6)~~ (5) (a) Sixty days before the expiration of [~~any extension of time~~] a nonuse
216 application, the state engineer shall notify the applicant by mail or by any form of electronic
217 communication through which receipt is verifiable, of the date when the [~~extension period~~]
218 nonuse application will expire.

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

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

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

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

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

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

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

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

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

H.B. 51 2nd Sub. (Gray) - Water Right Forfeiture Protection

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will result in increased revenues, which will be deposited as Dedicated Credits for the Division of Water Rights. However, due to statute limitations on how these Dedicated Credits can be used, a portion will be lapsing to the General Fund. This bill will also require appropriations to the Division for FY 2009: \$208,000 from the General Fund and \$150,000 from the Dedicated Credits; for FY 2010: \$96,000 from the General Fund and \$75,000 from the Dedicated Credits. The net costs to the General Fund will be \$74,500 one-time and \$58,500 ongoing.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$96,000	\$96,000	\$0	\$37,500	\$37,500
General Fund, One-Time	\$0	\$112,000	\$0	\$0	\$37,500	\$0
Dedicated Credits	\$0	\$150,000	\$75,000	\$0	\$150,000	\$75,000
Total	\$0	\$358,000	\$171,000	\$0	\$225,000	\$112,500

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.