

Representative Ben C. Ferry proposes the following substitute bill:

WATER RIGHT AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions relating to the use of water.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the nonuse period of a water right from five to seven years;
- ▶ allows a shareholder in a water company to file a nonuse application on a water right owned by the water company;
- ▶ changes the nonuse application;
- ▶ exempts a water right from forfeiture that is subject to an approved change application, which application is being diligently pursued;
- ▶ removes the requirement:
 - to file a statement of the resumption of use; and
 - for the state engineer to issue a certificate for the resumption of use;
- ▶ creates the Water Rights Task Force; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates:



- 26 ▶ \$7,000 to the Senate; and
- 27 ▶ \$7,000 to the House of Representatives.

28 **Other Special Clauses:**

29 This bill provides a repeal date for uncodified material.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **73-1-4**, as last amended by Laws of Utah 2007, Chapters 136 and 329

33 **Uncodified Material Affected:**

34 ENACTS UNCODIFIED MATERIAL



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

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

38 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
39 **seven years -- Extension of time.**

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

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

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

48 ~~[(2)]~~ (1) As used in this section[, "public"]:

49 (a) "Public water supply entity" means an entity that supplies water as a utility service
50 or for irrigation purposes and is also:

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

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

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

55 (b) "Shareholder" is as defined in Section 73-3-3.5.

56 (c) "Water company" is as defined in Section 73-3-3.5.

57 ~~[(3)]~~ (2) (a) When an appropriator or the appropriator's successor in interest abandons
58 or ceases to use all or a portion of a water right for a period of ~~[five]~~ seven years, the water
59 right or the unused portion of that water right ceases and the water reverts to the public,
60 unless~~[-, before the expiration of the five-year period,]~~ the appropriator or the appropriator's
61 successor in interest files a ~~[verified]~~ nonuse application with the state engineer.

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

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

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

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

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

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

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

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

85 (d) This section applies whether the unused or abandoned water or a portion of the
86 water is:

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

88 (ii) used by others without right with the knowledge of the water right holder[;
89 provided that the]; or

90 (iii) leased or made available to others by agreement.

91 (e) The use of water pursuant to a lease or other agreement with the appropriator or the
92 appropriator's successor [~~shall be considered to constitute~~] is beneficial use.

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

94 (i) [~~to~~] those periods of time when:

95 (A) a surface water source fails to yield sufficient water to satisfy the water right[~~; or~~
96 when]; or

97 (B) groundwater is not available because of:

98 (I) a sustained drought; or

99 (II) regulation of the water right based on its priority;

100 (ii) [~~to~~] water stored [~~in reservoirs pursuant to an existing water right~~], according to a
101 water right, in a surface reservoir or an aquifer in accordance with Title 73, Chapter 3b,
102 Groundwater Recharge and Recovery Act, where the stored water is being held in storage for
103 present or future use; [~~or~~]

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

108 [~~(g) Groundwater rights~~] (iv) a groundwater right used to supplement the quantity or
109 quality of other water supplies [~~may not be subject to loss or reduction under this section~~] if not
110 used during periods when the other water source delivers sufficient water [~~so as~~] to not require
111 use of the supplemental groundwater[-];

112 (v) a water right subject to an approved change application where the applicant is
113 diligently pursuing certification; or

114 (vi) a water right that is on file with the state engineer for which a physical facility
115 exists to divert and deliver water in accordance with the water right for:

116 (A) domestic use with associated irrigation use; and

117 (B) municipal use.

118 [~~(4)~~] (3) (a) The state engineer shall furnish [~~an~~] a nonuse application form requiring

119 the following information:

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

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

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

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

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

126 [~~(vi)~~] (v) the [~~extension of time~~] period of nonuse applied for;

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

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

129 (b) (i) Filing the application extends the time during which nonuse may continue until
130 the state engineer issues his order on the nonuse application.

131 (ii) Approval of a nonuse application protects a water right from forfeiture for nonuse
132 from the date the application was filed until the date of expiration of the nonuse application set
133 by the state engineer.

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

137 (ii) The notice shall:

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

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

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

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

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

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

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

151 ~~[(5)] (4) (a) [Nonuse applications]~~ The state engineer shall grant a nonuse application
152 on all or a portion of a water right [shall be granted by the state engineer for periods] for a
153 period of time not exceeding [five years each, upon a showing of] seven years if the applicant
154 shows a reasonable cause for nonuse.

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

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

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

159 (iii) operation of legal proceedings;

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

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

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

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

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

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

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

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

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

180 ~~[(c) Upon receipt of the applicant's properly completed, verified statement, the state~~

181 engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if
182 so, shall issue a certificate of resumption of use of the water as evidenced by the resumed
183 beneficial use.]

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

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

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

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

191 **Section 2. Water Rights Task Force.**

192 (1) There is created the Water Rights Task Force consisting of the following 16
193 members:

194 (a) three members of the Senate appointed by the president of the Senate;

195 (b) three members of the House of Representatives appointed by the speaker of the
196 House of Representatives;

197 (c) the executive director of the Department of Natural Resources or the executive
198 director's designee;

199 (d) the attorney general or the attorney general's designee; and

200 (e) eight members appointed by the governor and described as follows:

201 (i) one member who represents a municipality;

202 (ii) one member who represents an agricultural interest;

203 (iii) one member who represents a local district or special service district that provides
204 water;

205 (iv) one member who represents a county;

206 (v) one member who represents a water user association;

207 (vi) one member who represents a water company that delivers water for irrigation use;

208 (vii) one member who represents a private domestic water supplier; and

209 (viii) one member who is:

210 (A) licensed to practice law in the state; and

211 (B) knowledgeable about water law.

212 (2) (a) The president of the Senate shall designate a member of the Senate appointed
213 under Subsection (1)(a) as a cochair of the task force.

214 (b) The speaker of the House of Representatives shall designate a member of the House
215 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

216 (3) (a) A majority of the members of the task force constitute a quorum.

217 (b) The action of a majority of a quorum constitutes the action of the task force.

218 (4) Salaries and expenses of the members of the task force who are legislators shall be
219 paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Expense
220 and Mileage Reimbursement for Authorized Legislative Meetings, Special Sessions, and Veto
221 Override Sessions.

222 (5) The Office of Legislative Research and General Counsel shall provide staff support
223 to the task force.

224 (6) The task force shall review and make recommendations on the following issues:

225 (a) water right nonuse and forfeiture;

226 (b) water right change applications;

227 (c) applications to appropriate water; and

228 (d) any other related water issue.

229 (7) A final report, including any proposed legislation, shall be presented to the Natural
230 Resources, Agriculture, and Environment Interim Committee before November 30, 2008.

231 **Section 3. Appropriation.**

232 There is appropriated from the General Fund for fiscal year 2008-09 only:

233 (1) \$7,000 to the Senate to pay for the compensation and expenses of senators on the
234 task force; and

235 (2) \$7,000 to the House of Representatives to pay for the compensation and expenses
236 of representatives on the task force.

237 **Section 4. Repeal date.**

238 The uncodified material that creates the Water Rights Task Force is repealed on
239 November 30, 2008.