

1 **ABANDONMENT OR FORFEITURE OF WATER RIGHTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad J. Galvez**

5 Senate Sponsor: Ralph Okerlund

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions regarding forfeiture of a water right under Title 73, Water
10 and Irrigation.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ prohibits the state engineer from asserting forfeiture of a water right in a proposed
14 determination of rights if the period of nonuse did not occur or end during a certain
15 period;

16 ▶ bars an assertion of forfeiture regarding a water right subject to a proposed
17 determination if the assertion is not made by the state engineer in the proposed
18 determination or by a person in an objection to the proposed determination;

19 ▶ subjects a water right found to be valid in a decree adjudicating a general
20 determination of water rights to a claim of forfeiture based on a period of nonuse
21 that begins after the state engineer files the related proposed determination of rights
22 with the court; and

23 ▶ makes technical changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **73-1-4**, as last amended by Laws of Utah 2009, Chapter 388



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

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

34 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
35 **seven years -- Nonuse application.**

36 (1) As used in this section:

37 (a) "Public entity" means:

38 (i) the United States;

39 (ii) an agency of the United States;

40 (iii) the state;

41 (iv) a state agency;

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

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

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

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

47 (ii) is:

48 (A) a public entity;

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

51 (C) a community water system:

52 (I) that:

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

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

55 (II) whose voting members:

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

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

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

61 (D) a water users association:

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

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

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

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

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

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

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

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

73 (2) (a) When an appropriator or the appropriator's successor in interest abandons or
74 ceases to use all or a portion of a water right for a period of seven years, the water right or the
75 unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c),
76 unless the appropriator or the appropriator's successor in interest files a nonuse application
77 with the state engineer.

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

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

82 (c) (i) ~~[A] Except as provided in Subsection (2)(c)(ii), a water right or a portion of the~~
83 ~~water right may not be forfeited unless a judicial action to declare the right forfeited is~~
84 ~~commenced within 15 years from the end of the latest period of nonuse of at least seven years.~~

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

89 ~~[(iii) A decree entered in an action for general determination of rights under Chapter 4,~~

90 ~~Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any~~
91 ~~right determined to be valid in the decree, but does not bar a claim for periods of nonuse that~~
92 ~~occur after the entry of the decree.]~~

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

97 (ii) (A) The state engineer, in a proposed determination of rights prepared in
98 accordance with Section 73-4-11, may not assert that a water right was forfeited unless a period
99 of nonuse of seven years occurs or ends during the 15-years immediately preceding the day on
100 which the state engineer files the proposed determination of rights with the court.

101 (B) After the day on which a proposed determination of rights is filed with the court, a
102 person may not assert that a water right subject to that determination was forfeited during the
103 15-year period described in Subsection (2)(c)(ii)(A) unless the state engineer asserts forfeiture
104 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an
105 objection to the proposed determination.

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

111 ~~[(v)]~~ (iv) If in a judicial action a court declares a water right forfeited, on the date on
112 which the water right is forfeited:

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

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

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

116 and

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

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

120 (i) permitted to run to waste; or

- 121 (ii) used by others without right with the knowledge of the water right holder.
- 122 (e) This section does not apply to:
 - 123 (i) the use of water according to a lease or other agreement with the appropriator or the
 - 124 appropriator's successor in interest;
 - 125 (ii) a water right if its place of use is contracted under an approved state agreement or
 - 126 federal conservation fallowing program;
 - 127 (iii) those periods of time when a surface water or groundwater source fails to yield
 - 128 sufficient water to satisfy the water right;
 - 129 (iv) a water right when water is unavailable because of the water right's priority date;
 - 130 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
 - 131 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
 - 132 (A) the water is stored for present or future use; or
 - 133 (B) storage is limited by a safety, regulatory, or engineering restraint that the
 - 134 appropriator or the appropriator's successor in interest cannot reasonably correct;
 - 135 (vi) a water right if a water user has beneficially used substantially all of the water right
 - 136 within a seven-year period, provided that this exemption does not apply to the adjudication of a
 - 137 water right in a general determination of water rights under Chapter 4, Determination of Water
 - 138 Rights;
 - 139 (vii) except as provided by Subsection (2)(g), a water right:
 - 140 (A) (I) owned by a public water supplier;
 - 141 (II) represented by a public water supplier's ownership interest in a water company; or
 - 142 (III) to which a public water supplier owns the right of use; and
 - 143 (B) conserved or held for the reasonable future water requirement of the public, which
 - 144 is determined according to Subsection (2)(f);
 - 145 (viii) a supplemental water right during a period of time when another water right
 - 146 available to the appropriator or the appropriator's successor in interest provides sufficient water
 - 147 so as to not require use of the supplemental water right; or
 - 148 (ix) a water right subject to an approved change application where the applicant is
 - 149 diligently pursuing certification.
 - 150 (f) (i) The reasonable future water requirement of the public is the amount of water
 - 151 needed in the next 40 years by the persons within the public water supplier's projected service

152 area based on projected population growth or other water use demand.

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

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

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

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

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

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

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

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

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

167 (iii) the quantity of water;

168 (iv) the period of use;

169 (v) the extension of time applied for;

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

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

172 (b) (i) Filing the nonuse application extends the time during which nonuse may
173 continue until the state engineer issues an order on the nonuse application.

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

176 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
177 application once a week for two successive weeks:

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

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

181 (ii) The notice shall:

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

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

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

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

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

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

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

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

198 (b) A reasonable cause for nonuse includes:

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

200 (ii) the initiation of water conservation or efficiency practices, or the operation of a
201 groundwater recharge recovery program approved by the state engineer;

202 (iii) operation of legal proceedings;

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

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

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

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

213 (b) An applicant may file a subsequent nonuse application in accordance with this

214 section.

Legislative Review Note
as of 2-15-12 8:09 AM

Office of Legislative Research and General Counsel