

WATER LAW - FORFEITURE EXEMPTIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Michael E. Noel

LONG TITLE

Committee Note:

The Government Operations Interim Committee recommended this bill.

General Description:

This bill modifies provisions relating to the abandonment or forfeiture of water.

Highlighted Provisions:

This bill:

- ▶ clarifies that abandonment and forfeiture of water provisions do not apply to a water right for nonuse during the period of time in which the water right is subject to an approved change application where the applicant is diligently pursuing certification;

and

- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-4, as last amended by Laws of Utah 2013, Chapters 221 and 380

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



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

29 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
30 **seven years -- Nonuse application.**

31 (1) As used in this section:

32 (a) "Public entity" means:

33 (i) the United States;

34 (ii) an agency of the United States;

35 (iii) the state;

36 (iv) a state agency;

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

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

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

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

42 (ii) is:

43 (A) a public entity;

44 (B) a water corporation, as defined in Section [54-2-1](#), that is regulated by the Public
45 Service Commission;

46 (C) a community water system:

47 (I) that:

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

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

50 (II) whose voting members:

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

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

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

56 (D) a water users association:

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

58 (II) that is a local sponsor of a water project constructed by the United States Bureau of

59 Reclamation.

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

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

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

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

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

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

68 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
69 appropriator's successor in interest abandons or ceases to use all or a portion of a water right
70 for a period of seven years, the water right or the unused portion of that water right is subject to
71 forfeiture in accordance with Subsection (2)(c).

72 (b) (i) An appropriator or the appropriator's successor in interest may file an
73 application for nonuse with the state engineer.

74 (ii) If a person described in Subsection (2)(b)(i) files and receives approval on a nonuse
75 application, nonuse of the water right subject to the application is not counted toward a
76 seven-year period described in Subsection (2)(a) during the period of time beginning on the day
77 on which the person files the application and ending on the day on which the application
78 expires without being renewed.

79 (iii) If a person described in Subsection (2)(b)(i) files and receives approval on
80 successive, overlapping nonuse applications, nonuse of the water right subject to the
81 applications is not counted toward a seven-year period described in Subsection (2)(a) during
82 the period of time beginning on the day on which the person files the first application and
83 ending on the day on which the last application expires without being renewed.

84 (iv) Approval of a nonuse application does not protect a water right that is already
85 subject to forfeiture under Subsection (2)(a) for full or partial nonuse of the water right.

86 (v) A nonuse application may be filed on all or a portion of the water right, including
87 water rights held by a water company.

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

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

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

97 (B) After the day on which a proposed determination of rights is filed with the court a
98 person may not assert that a water right subject to that determination was forfeited during the
99 15-year period described in Subsection (2)(c)(ii)(A), unless the state engineer asserts forfeiture
100 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an
101 objection to the proposed determination that asserts forfeiture.

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

107 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
108 the water right is forfeited:

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

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

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

112 and

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

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

116 (i) permitted to run to waste; or

117 (ii) used by others without right with the knowledge of the water right holder.

118 (e) This section does not apply to:

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

121 (ii) a water right if its place of use is contracted under an approved state agreement or
122 federal conservation fallowing program;

123 (iii) those periods of time when a surface water or groundwater source fails to yield
124 sufficient water to satisfy the water right;

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

126 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
127 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

128 (A) the water is stored for present or future use; or

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

131 (vi) a water right if a water user has beneficially used substantially all of the water right
132 within a seven-year period, provided that this exemption does not apply to the adjudication of a
133 water right in a general determination of water rights under Chapter 4, Determination of Water
134 Rights;

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

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

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

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

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

141 (viii) a supplemental water right during a period of time when another water right
142 available to the appropriator or the appropriator's successor in interest provides sufficient water
143 so as to not require use of the supplemental water right; or

144 (ix) a period of nonuse of a water right during the time the water right is subject to an
145 approved change application where the applicant is diligently pursuing certification.

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

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

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

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

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

- 156 (i) the public water supplier submits a change application under Section 73-3-3; and
- 157 (ii) the state engineer approves the change application.

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

- 160 (i) the name and address of the applicant;
- 161 (ii) a description of the water right or a portion of the water right, including the point of
162 diversion, place of use, and priority;
- 163 (iii) the quantity of water;
- 164 (iv) the period of use;
- 165 (v) the extension of time applied for;
- 166 (vi) a statement of the reason for the nonuse of the water; and
- 167 (vii) any other information that the state engineer requires.

168 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the
169 application once a week for two successive weeks:

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

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

173 (ii) The notice shall:

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

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

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

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

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

183 (d) In any proceedings to determine whether the nonuse application should be
184 approved or rejected, the state engineer shall follow the procedures and requirements of Title
185 63G, Chapter 4, Administrative Procedures Act.

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

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

190 (b) A reasonable cause for nonuse includes:

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

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

194 (iii) operation of legal proceedings;

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

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

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel