

WATER AMENDMENTS AND EDUCATION ENTITIES

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends definitions related to public entities.

Highlighted Provisions:

This bill:

- ▶ provides that an institution of higher education is a public entity; and
- ▶ makes technical and conforming changes.

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 2017, Chapter 132

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

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

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

(1) As used in this section:

(a) "Public entity" means:



- 28 (i) the United States;
- 29 (ii) an agency of the United States;
- 30 (iii) the state;
- 31 (iv) a state agency;
- 32 (v) a political subdivision of the state; [~~or~~]
- 33 (vi) an agency of a political subdivision of the state~~[-];~~ or
- 34 (vii) an institution of higher education that is part of the state system of higher
- 35 education specifically identified in Section [53B-1-102](#).
- 36 (b) "Public water supplier" means an entity that:
 - 37 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
 - 38 industrial use; and
 - 39 (ii) is:
 - 40 (A) a public entity;
 - 41 (B) a water corporation, as defined in Section [54-2-1](#), that is regulated by the Public
 - 42 Service Commission;
 - 43 (C) a community water system:
 - 44 (I) that:
 - 45 (Aa) supplies water to at least 100 service connections used by year-round residents; or
 - 46 (Bb) regularly serves at least 200 year-round residents; and
 - 47 (II) whose voting members:
 - 48 (Aa) own a share in the community water system;
 - 49 (Bb) receive water from the community water system in proportion to the member's
 - 50 share in the community water system; and
 - 51 (Cc) pay the rate set by the community water system based on the water the member
 - 52 receives; or
 - 53 (D) a water users association:
 - 54 (I) in which one or more public entities own at least 70% of the outstanding shares; and
 - 55 (II) that is a local sponsor of a water project constructed by the United States Bureau of
 - 56 Reclamation.
 - 57 (c) "Shareholder" means the same as that term is defined in Section [73-3-3.5](#).
 - 58 (d) "Water company" means the same as that term is defined in Section [73-3-3.5](#).

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

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

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

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

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

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

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

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

75 (iv) (A) The approval of a nonuse application excuses the requirement of beneficial use
76 of water from the date of filing.

77 (B) The time during which an approved nonuse application is in effect does not count
78 toward the seven-year period described in Subsection (2)(a).

79 (v) The filing or approval of a nonuse application or a series of nonuse applications
80 under Subsection (3) does not:

81 (A) constitute beneficial use of a water right;

82 (B) protect a water right that is already subject to forfeiture under this section; or

83 (C) bar a water right owner from:

84 (I) using the water under the water right as permitted under the water right; or

85 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided
86 by law.

87 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the
88 water right may not be forfeited unless a judicial action to declare the right forfeited is
89 commenced:

90 (A) within 15 years from the end of the latest period of nonuse of at least seven years;
91 or

92 (B) within the combined time of 15 years from the end of the most recent period of
93 nonuse of at least seven years and the time the water right was subject to one or more nonuse
94 applications.

95 (ii) (A) The state engineer, in a proposed determination of rights filed with the court
96 and prepared in accordance with Section 73-4-11, may not assert that a water right was
97 forfeited unless the most recent period of nonuse of seven years ends or occurs:

98 (I) during the 15 years immediately preceding the day on which the state engineer files
99 the proposed determination of rights with the court; or

100 (II) during the combined time immediately preceding the day on which the state
101 engineer files the proposed determination of rights consisting of 15 years and the time the
102 water right was subject to one or more approved nonuse applications.

103 (B) After the day on which a proposed determination of rights is filed with the court a
104 person may not assert that a water right subject to that determination was forfeited before the
105 issuance of the proposed determination, unless the state engineer asserts forfeiture in the
106 proposed determination, or a person, in accordance with Section 73-4-11, makes an objection
107 to the proposed determination that asserts forfeiture.

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

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

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

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

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

118 and

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

120 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or

121 abandoned water or a portion of the water is:

122 (i) permitted to run to waste; or

123 (ii) beneficially used by others without right with the knowledge of the water right
124 holder.

125 (e) This section does not apply to:

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

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

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

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

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

135 (A) the water is stored for present or future beneficial 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 (vi) a water right if a water user has beneficially used substantially all of the water right
139 within a seven-year period, provided that this exemption does not apply to the adjudication of a
140 water right in a general determination of water rights under Chapter 4, Determination of Water
141 Rights;

142 (vii) except as provided by Subsection (2)(g), 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 beneficial 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 (viii) a supplemental water right during a period of time when another water right
149 available to the appropriator or the appropriator's successor in interest provides sufficient water
150 so as to not require beneficial use of the supplemental water right; or

151 (ix) a period of nonuse of a water right during the time the water right is subject to an

152 approved change application where the applicant is diligently pursuing certification.

153 (f) (i) The reasonable future water requirement of the public is the amount of water
154 needed in the next 40 years by:

155 (A) the persons within the public water supplier's reasonably anticipated service area
156 based on reasonably anticipated population growth; or

157 (B) other water use demand.

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

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

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

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

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

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

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

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

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

172 (iii) the quantity of water;

173 (iv) the period of use;

174 (v) the extension of time applied for;

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

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

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

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

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

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 (c) 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 (d) In [~~any proceedings~~] a proceeding to determine whether the nonuse application
193 should be approved or rejected, the state engineer shall follow [~~the procedures and~~
194 ~~requirements of~~] Title 63G, Chapter 4, Administrative Procedures Act.
- 195 (e) After further investigation, the state engineer may approve or reject the application.
- 196 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
197 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
198 for nonuse.
- 199 (b) A reasonable cause for nonuse includes:
- 200 (i) a demonstrable financial hardship or economic depression;
- 201 (ii) physical causes or changes that render use beyond the reasonable control of the
202 water right owner so long as the water right owner acts with reasonable diligence to resume or
203 restore the use;
- 204 (iii) the initiation of water conservation or efficiency practices, or the operation of a
205 groundwater recharge recovery program approved by the state engineer;
- 206 (iv) operation of legal proceedings;
- 207 (v) the holding of a water right or stock in a mutual water company without use by any
208 water supply entity to meet the reasonable future requirements of the public;
- 209 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
210 implementing an existing, approved water management plan; or
- 211 (vii) 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.

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

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