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WATER AND IRRIGATION REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to forfeiture and nonuse applications.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to forfeiture and nonuse applications;
- ▶ clarifies a provision relating to protection from forfeiture for a water right subject to an approved nonuse application; and
- ▶ makes technical 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 2009, Chapter 388

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.



- 28 (1) As used in this section:
- 29 (a) "Public entity" means:
- 30 (i) the United States;
- 31 (ii) an agency of the United States;
- 32 (iii) the state;
- 33 (iv) a state agency;
- 34 (v) a political subdivision of the state; or
- 35 (vi) an agency of a political subdivision of the state.
- 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" is as defined in Section 73-3-3.5.
- 58 (d) "Water company" is as 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) ~~When~~ Except as provided in Subsection (2)(b) or (e), when an appropriator or
66 the appropriator's successor in interest abandons or ceases to use all or a portion of a water
67 right for a period of seven years, the water right or the unused portion of that water right is
68 subject to forfeiture in accordance with Subsection (2)(c) ~~[- unless the appropriator or the~~
69 ~~appropriator's successor in interest files a nonuse application with the state engineer].~~

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

72 (ii) Beginning on May 5, 2008, if a person described in Subsection (2)(b)(i) files and
73 receives approval on a nonuse application, nonuse of the water right subject to the application
74 is not counted toward a seven-year period described in Subsection (2)(a) during the period of
75 time beginning on the day on which the person files the application and ending on the day on
76 which the application expires without being renewed.

77 (iii) Beginning on May 5, 2008, if a person described in Subsection (2)(b)(i) files and
78 receives approval on successive, overlapping nonuse applications, nonuse of the water right
79 subject to the applications is not counted toward a seven-year period described in Subsection
80 (2)(a) during the period of time beginning on the day on which the person files the first
81 application and ending on the day on which the last application expires without being renewed.

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

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

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

88 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial
89 action to declare the right forfeited is commenced within 15 years from the end of the latest

90 period of nonuse of at least seven years.

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

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

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

103 (v) If in a judicial action a court declares a water right forfeited, on the date on which
104 the water right is forfeited:

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

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

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

108 and

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

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

112 (i) permitted to run to waste; or

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

114 (e) This section does not apply to:

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

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

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

- 121 (iv) a water right when water is unavailable because of the water right's priority date;
- 122 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
- 123 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
 - 124 (A) the water is stored for present or future use; or
 - 125 (B) storage is limited by a safety, regulatory, or engineering restraint that the
 - 126 appropriator or the appropriator's successor in interest cannot reasonably correct;
- 127 (vi) a water right if a water user has beneficially used substantially all of the water right
- 128 within a seven-year period, provided that this exemption does not apply to the adjudication of a
- 129 water right in a general determination of water rights under Chapter 4, Determination of Water
- 130 Rights;
 - 131 (vii) except as provided by Subsection (2)(g), a water right:
 - 132 (A) (I) owned by a public water supplier;
 - 133 (II) represented by a public water supplier's ownership interest in a water company; or
 - 134 (III) to which a public water supplier owns the right of use; and
 - 135 (B) conserved or held for the reasonable future water requirement of the public, which
 - 136 is determined according to Subsection (2)(f);
 - 137 (viii) a supplemental water right during a period of time when another water right
 - 138 available to the appropriator or the appropriator's successor in interest provides sufficient water
 - 139 so as to not require use of the supplemental water right; or
 - 140 (ix) a water right subject to an approved change application where the applicant is
 - 141 diligently pursuing certification.
- 142 (f) (i) The reasonable future water requirement of the public is the amount of water
- 143 needed in the next 40 years by the persons within the public water supplier's projected service
- 144 area based on projected population growth or other water use demand.
 - 145 (ii) For purposes of Subsection (2)(f)(i), a community water system's projected service
 - 146 area:
 - 147 (A) is the area served by the community water system's distribution facilities; and
 - 148 (B) expands as the community water system expands the distribution facilities in
 - 149 accordance with Title 19, Chapter 4, Safe Drinking Water Act.
 - 150 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
 - 151 Subsection (2)(e)(vii) applies if:

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

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

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

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

166 ~~[(ii) Approval of a nonuse application protects a water right from forfeiture for nonuse
167 from the application's filing date until the approved application's expiration date.]~~

168 ~~[(c)]~~ (b) (i) Upon receipt of the application, the state engineer shall publish a notice of
169 the 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 ~~[(d)]~~ (c) Any interested person may file a written protest with the state engineer against
178 the 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 ~~[(e)]~~ (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 ~~[(f)]~~ (e) After further investigation, the state engineer may approve or reject the
187 application.

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

191 (b) A reasonable cause for nonuse includes:

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

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

195 (iii) operation of legal proceedings;

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

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

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

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

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

Legislative Review Note
as of 2-21-13 11:20 AM

Office of Legislative Research and General Counsel