

## Water and Irrigation Revisions (HB360)

### *Resolving Conflict / Securing a Future*

#### What is Behind this Bill?

The content of this bill was proposed by the Executive Water Issues Task Force to clarify existing law on Nonuse Applications (Utah Code Section 73-1-4). The task force voted unanimously to support the proposal. The requirements and effects of nonuse applications changed significantly due to legislation enacted in 2008. A controversy has developed over the effect of the approval of a Nonuse Application.

#### What is the Issue?

Prior to 2008, Nonuse Applications could not be filed if a nonuse period which would subject a water right to forfeiture had occurred. The applicant was required as part of the application process to state the date the water had last been placed to beneficial use and the state engineer investigated the facts and could not approve an application if a nonuse period which would subject the water right to forfeiture had occurred. Before the application expired, either proof of resumption of use, or a request for an additional nonuse period was required or the water right was permanently lost due to the expiration of the nonuse application. The operation of Nonuse Applications under that framework assured the right was valid since no right with potential for forfeiture could be approved under a nonuse application and in order to leave the nonuse process, one had to prove that the water had been placed back to use. Nonuse applications while possessing tremendous certainty assurances were seldom used because of the rigidity of the application process and dire consequences if the application expired without action.

One of the significant concerns which led to passage of HB51 by the 2008 legislature was water rights, particularly those held by public water suppliers, without use, which presumably could be declared forfeited as a matter of law. The bill provided a series of tools to help protect the water rights from that dire consequence. Part of the solution was to significantly alter Nonuse Applications so they would be more attractive to use as a water right protection. That was accomplished by removing the requirement that the water right must have previously been in use, and the requirement that the water right must return to use when the application expires. Nonuse Applications by those changes transformed from a finality seal on a water right, to a notice and nonuse period protection instrument.

# Utah Department of Natural Resources

## Division of Water Rights



Language was added to the statute in 2008 to explain this new role but lacked sufficient clarity to avoid the controversy which has now developed. The legislative intent of the existing law is that an approved Nonuse Application protects a water right from assertions of forfeiture from nonuse that may occur during the time the application is active (filing to expiration date). However, some water users continue to assert the approval of a Nonuse Application bars all claims of forfeiture.

### Proposed Clarification

To avoid further confusion the task force proposed the existing language on a Nonuse Application's effect be stricken and more carefully worded protections consistent with the intent of the existing provisions be added to the statute. That is what the bill does.

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