



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Michael O. Leavitt
Governor

Robert L. Morgan
Executive Director

Jerry D. Olds
State Engineer

1594 West North Temple, Suite 220
PO Box 146300
Salt Lake City, Utah 84114-6300
(801) 538-7240 telephone
(801) 538-7467 fax
www.nr.utah.gov

November 12, 2002

MEMORANDUM

TO: Water Rights Staff

FROM: Jerry D. Olds, State Engineer *Jerry D. Olds*

RE: Policy on Two Issues Concerning Processing of Non-use Applications

1. Review has been made of the past practice of preparing one non-use application to cover more than one water right. These multi-filing applications have been generated manually to accommodate applicants such as municipalities, industrial operations, large ranches, etc. in protecting several unused water rights in one package. It appears that the increased time and expense involved in creating, processing, and advertising such multi-filing applications incur sufficient cost to the office that continuing the practice is not practical. The filing fee is now used to pay the cost of advertising. In most cases with multi-filing applications, we are not collecting sufficient funds to cover the cost of advertising. It was decided on October 8, 2002, that multi-filing non-use applications will not be generated by staff nor accepted from water users or their representatives. In Section 73-1-4(3)(b) water users are informed that "A non-use application may be filed on all or a portion of a water right." No authorization is given for multiple water rights to be included in the same non-use application, nor is it specifically restricted. By this policy statement, a separate non-use application will be required for each water right. This policy includes situations involving several supplemental rights for the same project and several rights covering different classes of decreed water for the same project. This policy will not be retroactive to such filings that may have been submitted prior to October 8th but are as yet unapproved. As a follow-up, entities who have multi-filing non-use applications currently approved and running their course should be advised that they will have to file separate applications. Research will be done to identify these parties and provide notice.
2. Problems and misunderstanding have occurred concerning non-use applications with multiple owners. Statute 73-1-4(3)(a) states "When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of five years, the water right on the unused portion of that water right ceases, and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified non-use application with the state engineer." (underline added) When proof-due notices are sent, non-use applications are generated with all of the owners' names included. Such forms are sent separately to each owner of record. However, protection from forfeiture by the submission of the non-use application is limited to the parties who sign the form as an owner or as properly-documented power of attorney and who must legally be the appropriator or the appropriator's successor in interest. If the form lists seven entities, but only one or two sign, only the portion of the underlying right owned by the signing parties is protected by the non-use application. Their portion should be segregated and processed separately from the remaining owners.