

# WATER RIGHT FORFEITURE

Wood River Water Collaborative  
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# Overview



- **Forfeiture Provision**
- **Why do we have water right forfeiture?**
  - 48 Idaho Law Review 419 (2012)
- **Avoidance of Forfeiture**
- **Forfeiture and IDWR**

# Statutory Forfeiture

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Idaho Code § 42-222(2)

**All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or feature such right to such water shall revert to the state and be again subject to appropriation under this chapter ....**

# Partial Forfeiture



- The Idaho Supreme Court has approved it.
- State v. Hagerman Water Right Owners, Inc., 130 Idaho 727, 947 P.2d 400 (1997)
- What does it mean?

# Why Forfeiture?

## 48 Idaho Law Review 419 (2012)

- What other real property is subject to “use it, or lose it?”
- The Idaho Supreme Court says it is to achieve maximum use and benefit of our water resources.
- The original justification was to avoid speculation in, and monopoly of water resources.
- Why do we need it now?

# Avoiding Forfeiture



- The only reason to have your right declared forfeited:
- Ignorance: people are not aware that they can lose water rights appurtenant to their property—developers and lot owners.
- Indigence: people cannot afford to put their water to use or pay the fees and other costs to prevent forfeiture.
- Indolence: people cannot be bothered to worry about water rights.

# Avoiding Forfeiture



- Use your water right at least once every five years.
- Obtain an extension of time of up to an additional 5 years to avoid forfeiture before your first five years is up. “Good and sufficient reason” for non-application to beneficial use.  
I.C. §42-222(3) & (4)
- Lease your water into the water supply bank. I.C. § 42-1764(2)
- Eleven statutory defenses to forfeiture: I.C. § 42-223

# Avoiding Forfeiture



1. Federal crop land set aside program.
2. Reasonable anticipated future municipal needs.
3. Water right substituted with land application of waste.
4. Non-use because of compliance with a ground water management plan.



# Avoiding Forfeiture



5. Water right leased to a water supply bank.
6. Nonuse due to circumstances beyond the control of the water right owner.
7. Non-use of a water right held by an entity such as an irrigation district due to non-use by its member(s) unless under entity control.
8. Non-use of a water right held by an entity such as an irrigation district due to exclusion of land from the district unless under entity control.

# Avoiding Forfeiture



9. Nonuse dues to a water conservation practice which maintains full beneficial use.
10. Nonuse because water is used for mitigation purposes approved by the Director.
11. Nonuse of a mining water right due to low mineral prices.

# Forfeiture and IDWR



- Water right transfers
- Leasing water rights into the water supply bank
- Extensions of time to avoid forfeiture
- Water calls—implausible but potential circumstance



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