

Notes

By: Shelley W. Keen *SWK*
Date: March 18, 2010
Subject: Forfeiture of irrigation rights

Jeff Peppersack, on the advice of Phil Rassier, determined that IDWR should not find forfeiture of an irrigation right until non-use at the beginning of the irrigation season in the sixth year. For example, a water right used in 2004 but not used during the 2005-2009 irrigation seasons would not be considered forfeited until it is not used at the beginning of the 2010 irrigation season. This is possible because irrigation could not have occurred after the end of the irrigation season in 2004 and, therefore, the five-year period of non-use does not begin accruing until the first day of the irrigation season in 2005. This determination is important because it allows irrigators to take action to protect their rights from forfeiture after the fifth irrigation season of non-use.

Besides resuming use, the most common actions to prevent forfeiture are obtaining an extension of time to avoid forfeiture and leasing the water right to the Water Supply Bank. Based on the determination above, forfeiture would not occur if one of these actions were completed during the late fall or winter after the fifth season of non-use.

Also, applying to lease a water right to the Water Supply Bank is not protection against forfeiture. The water right must be accepted into the WSB to be protected from forfeiture, and there is no guarantee of acceptance. However, if a right is accepted into the WSB, the acceptance will be retroactive to the date the lease application was received by IDWR.

Finally, it would be difficult to write an order denying an extension of time or a transfer application of the basis of five years of non-use without also concluding that the subject water right has been forfeited. However, it may be possible to reject a transfer application without finding forfeiture when the applicant has not provided sufficient information for IDWR to draw a conclusion about the period of non-use. For more information about denying and rejecting transfers, see p. 17 of the 12/21/2009 version of the *Transfer Processing Policies and Procedures* memo.