On the Frontier of Water Rights: Beneficial Use and Forfeiture

Nicholas A Potter, Jonathan Yoder

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Forfeiture for non-use, the process by which a water right is reduced or eliminated if it is not used for a defined period of time (usually five consecutive years)[[1]](#footnote-2), is often criticized for contributing to water shortages by encouraging waste, reducing investment, and inhibiting market transactions that would improve economic efficiency. Irrigators do not have an incentive to use water efficiently if by doing so they reduce their water use and risk forfeiting a part of their right. Yet forfeiture is a component of water law in every state in the western United States, all of which allocate water under the doctrine of prior appropriation, in which water is allocated in order of seniority. Such a ubiquitious policy must have been at least thought to be beneficial in its time.

# References

Allen, Douglas W. 1991. “Homesteading and Property Rights; or, "How the West Was Really Won".” *The Journal of Law and Economics* 34 (1): 1–23. <https://doi.org/10.1086/467217>.

1. While the forfeiture period is five years in most states, it is seven in Utah, three years in Kansas and ten years in Colorado. [↑](#footnote-ref-2)