

**73-3-12 Time limit on construction and application to beneficial use -- Extensions --
Procedures and criteria.**

- (1) As used in this section:
 - (a) "Public water supplier" is as defined in Section 73-1-4.
 - (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.
- (2)
 - (a) Within the time set by the state engineer under Subsection 73-3-10(5), an applicant shall:
 - (i) construct works, if necessary;
 - (ii) apply the water to beneficial use; and
 - (iii) file proof with the state engineer in accordance with Section 73-3-16.
 - (b) Except as provided by Subsection (4), the state engineer shall extend the time in which an applicant shall comply with Subsection (2)(a) if:
 - (i) the date set by the state engineer is not after 50 years from the day on which the application is approved; and
 - (ii) the applicant shows:
 - (A) reasonable and due diligence in completing the appropriation; or
 - (B) a reasonable cause for delay in completing the appropriation.
 - (c) An applicant shall file a request for an extension of time with the state engineer on or before the date set for filing proof.
 - (d) The state engineer may grant an extension of time authorized by Subsection (2)(b) if the state engineer sets a date:
 - (i) no later than 14 years from the day on which the application is approved if the applicant meets the requirements of Subsection (2)(b); and
 - (ii) after 14 years from the day on which the application is approved if:
 - (A) the applicant meets the requirements of Subsection (2)(b); and
 - (B) the state engineer publishes notice as provided in Subsection (2)(e).
 - (e)
 - (i) The state engineer shall publish a notice of the request for an extension of time:
 - (A) once a week for two successive weeks, in a newspaper of general circulation, in the county:
 - (I) in which the water source is located; and
 - (II) where the water will be used; and
 - (B) in accordance with Section 45-1-101 for two weeks.
 - (ii) The notice shall:
 - (A) state that a request for an extension of time has been made; and
 - (B) specify where an interested party may obtain additional information relating to the request.
 - (f) A person who owns a water right or holds an application from the water source referred to in Subsection (2)(e) may file a protest with the state engineer:
 - (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
 - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
 - (g) The approved extension of time is effective so long as the applicant continues to exercise reasonable and due diligence in completing the appropriation.
 - (h) The state engineer shall consider the holding of an approved application by a public water supplier or a wholesale electrical cooperative to meet the reasonable future water or electricity requirements of the public to be reasonable and due diligence in completing the appropriation for the purposes of this section for 50 years from the date on which the application is approved.

- (i) If the state engineer finds unreasonable delay or lack of reasonable and due diligence in completing the appropriation, the state engineer may:
 - (i) deny the extension of time; or
 - (ii) grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.
- (3) Except as provided by Subsection (4), an application upon which proof has not been filed shall lapse and have no further force or effect after 50 years from the date on which the application is approved.
- (4)
 - (a) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, extend the time in which to file proof by setting a date after 50 years from the day on which the application is approved.
 - (b)
 - (i) The state engineer may extend the time in which the applicant shall comply with Subsection (2)(a) by setting a date after 50 years from the day on which the application is approved if the applicant:
 - (A) is a public water supplier or a wholesale electrical cooperative; and
 - (B) provides information that shows the water applied for in the application is needed to meet the reasonable future requirements of the public.
 - (ii) The information provided by a public water supplier shall be in accordance with the criteria listed in Subsection 73-1-4(2)(f).
 - (iii) A wholesale electrical cooperative shall provide the information described in Subsection (4)(b)(i)(B) in a report that forecasts:
 - (A) the need for the water to produce power; and
 - (B) the power output of the project for the wholesale electrical cooperative within the next 40 years.
 - (c) The state engineer shall extend the time in which to file proof by setting a reasonable date after 50 years from the day on which the application is approved if the applicant:
 - (i) meets the requirements in Subsection (4)(b); and
 - (ii) has:
 - (A) constructed works to apply the water to beneficial use; or
 - (B) made substantial expenditures to construct the works.

Amended by Chapter 221, 2013 General Session