

Effective 5/4/2022

73-3-5.6 Applications to appropriate or permanently change a small amount of water -- Proof of appropriation or change.

(1) As used in this section:

- (a) "Application" means an application to:
 - (i) appropriate a small amount of water; or
 - (ii) permanently change a small amount of water.
- (b) "Livestock water right" means a right for:
 - (i) livestock to consume water:
 - (A) directly from the water source; or
 - (B) from an impoundment into which the water is diverted; and
 - (ii) associated uses of water related to the raising and care of livestock.
- (c) "Proof" means proof of:
 - (i) appropriation; or
 - (ii) permanent change.
- (d) "Small amount of water" means the amount of water necessary to meet the requirements of:
 - (i) one residence;
 - (ii) 1/4 acre of irrigable land; and
 - (iii) a livestock watering right for:
 - (A) 10 cattle; or
 - (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than cattle.

(2) The state engineer may approve an application if:

- (a) the state engineer undertakes a thorough investigation of the application;
- (b) notice is provided in accordance with Subsection (3);
- (c) the application complies with the state engineer's regional policies and restrictions and Section 73-3-3 or 73-3-8, as applicable; and
- (d) the application does not conflict with a political subdivision's ordinance:
 - (i) for planning, zoning, or subdivision regulation; or
 - (ii) under Section 10-8-15.

(3)

- (a) Advertising of an application specified in Subsection (2) is at the discretion of the state engineer.
- (b) If the state engineer finds that the uses proposed by the application may impair other rights, before approving the application, the state engineer shall give notice of the application according to Section 73-3-6.

(4) An applicant receiving approval under this section is responsible for the time limit for construction and submitting proof as required by Subsection (6).

(5) Sixty days before the end of the time limit for construction, the state engineer shall notify the applicant by mail, or send notice electronically if receipt is verifiable, when proof is due.

(6)

- (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate under Section 73-3-17 if, as proof, the applicant files an affidavit:
 - (i) on a form provided by the state engineer;
 - (ii) that specifies the amount of:
 - (A) irrigated land; and
 - (B) livestock watered; and
 - (iii) that declares the residence is constructed and occupied.

- (b) The form provided by the state engineer under Subsection (6)(a) may require the information the state engineer determines is necessary to maintain accurate records regarding the point of diversion and place of use.
- (7) For a proof filed under Subsection (6) that does not conform to the underlying approved application, the state engineer may issue a certificate under Section 73-3-17 if the discrepancy between the proof and the underlying approved application does not impair existing rights and:
 - (a) the point of diversion represented in the proof is:
 - (i) located within 660 feet of the corresponding point of diversion described in the underlying approved application; and
 - (ii) located on the same parcel as described in the underlying approved application;
 - (b) the place of use represented in the proof is located in a quarter-quarter section or lot that is adjacent to the place of use in the underlying approved application; or
 - (c) the purpose of use represented in the proof is adjusted without exceeding the amount of water defined under Subsection (1)(d).
- (8) If an applicant does not file the proof required by Subsection (6) by the day on which the time limit for construction ends, the application lapses under Section 73-3-18.
- (9)
 - (a) Except as provided in Subsections (10) and (11), an applicant whose application lapses may file a request with the state engineer to reinstate the application, if the applicant demonstrates that the applicant or the applicant's predecessor in interest:
 - (i) constructed and occupied a residence within the time limit for construction; and
 - (ii) beneficially uses the water.
 - (b) Except as provided in Subsection (11), if an applicant meets the requirements of Subsection (9)(a) and submits an affidavit as provided by Subsection (6), the state engineer shall issue a certificate for the beneficial uses the applicant attests to in an affidavit described in Subsection (6).
- (10) For an application related to the use of water located within an area where general determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are pending or concluded, an applicant whose application lapses may not file a request for reinstatement with the state engineer if:
 - (a) the application lapsed before the state engineer issued notice of the time to file a statement of water users claim under Section 73-4-3; and
 - (b) the applicant failed to timely submit a statement of claim as described in Subsection (11)(c)(ii).
- (11) For an application related to the use of water located within an area where general determination proceedings under Title 73, Chapter 4, Determination of Water Rights, are pending, the state engineer shall allow a reinstatement request under Subsection (9)(a) and, instead of issuing a certificate, evaluate the reinstatement request and statement of claim as part of the general adjudication for the area, if:
 - (a) the application lapsed before the state engineer issued notice of the time to file a statement of water users claim under Section 73-4-3;
 - (b) the applicant files the request for reinstatement no more than 90 days after the day on which the state engineer issues the notice of the time to file statements of claim in accordance with Section 73-4-3; and
 - (c) the applicant files:
 - (i) an affidavit described in Subsection (6); and
 - (ii) a timely statement of claim under Section 73-4-5.

- (12) If an applicant fulfills the requirements in Subsection (11), the state engineer may issue a certificate before evaluating the claim in the general adjudication.
- (13) The priority date for an application reinstated under this section is the day on which the applicant files the request for reinstatement of the application.

Amended by Chapter 85, 2022 General Session