

28 (b) a water company regulated by the Public Service Commission; or

29 (c) any other owner of a community water system.

30 (3) (a) When an appropriator or the appropriator's successor in interest abandons or
31 ceases to use all or a portion of a water right for a period of five years, the water right or the
32 unused portion of that water right ceases and the water reverts to the public, unless, before the
33 expiration of the five-year period, the appropriator or the appropriator's successor in interest
34 files a verified nonuse application with the state engineer.

35 (b) (i) A nonuse application may be filed on all or a portion of the water right,
36 including water rights held by mutual irrigation companies.

37 (ii) Public water supply entities that own stock in a mutual water company, after giving
38 written notice to the water company, may file nonuse applications with the state engineer on
39 the water represented by the stock.

40 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial
41 action to declare the right forfeited is commenced within 15 years from the end of the latest
42 period of nonuse of at least five years.

43 (ii) If forfeiture is asserted in an action for general determination of rights in
44 conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year
45 limitation period shall commence to run back in time from the date the state engineer's
46 proposed determination of rights is served upon each claimant.

47 (iii) A decree entered in an action for general determination of rights under Chapter 4,
48 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any
49 right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that
50 occur after the entry of the decree.

51 (iv) A proposed determination by the state engineer in an action for general
52 determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of
53 forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has
54 been filed within the time allowed in Chapter 4, Determination of Water Rights.

55 (d) The extension of time to resume the use of that water may not exceed five years
56 unless the time is further extended by the state engineer.

57 (e) The provisions of this section are applicable whether the unused or abandoned
58 water or a portion of the water is permitted to run to waste or is used by others without right

59 with the knowledge of the water right holder, provided that the use of water pursuant to a lease
60 or other agreement with the appropriator or the appropriator's successor shall be considered to
61 constitute beneficial use.

62 (f) The provisions of this section shall not apply:

63 (i) to those periods of time when a surface water source fails to yield sufficient water to
64 satisfy the water right, or when groundwater is not available because of a sustained drought;

65 (ii) to water stored in reservoirs pursuant to an existing water right, where the stored
66 water is being held in storage for present or future use; or

67 (iii) when a water user has beneficially used substantially all of a water right within a
68 five-year period, provided that this exemption shall not apply to the adjudication of a water
69 right in a general determination of water rights under Chapter 4, Determination of Water
70 Rights.

71 (g) Groundwater rights used to supplement the quantity or quality of other water
72 supplies may not be subject to loss or reduction under this section if not used during periods
73 when the other water source delivers sufficient water so as to not require use of the
74 supplemental groundwater.

75 (4) (a) The state engineer shall furnish an application requiring the following
76 information:

77 (i) the name and address of the applicant;

78 (ii) a description of the water right or a portion of the water right, including the point of
79 diversion, place of use, and priority;

80 (iii) the date the water was last diverted and placed to beneficial use;

81 (iv) the quantity of water;

82 (v) the period of use;

83 (vi) the extension of time applied for;

84 (vii) a statement of the reason for the nonuse of the water; and

85 (viii) any other information that the state engineer requires.

86 (b) Filing the application extends the time during which nonuse may continue until the
87 state engineer issues his order on the nonuse application.

88 (c) (i) Upon receipt of the application, the state engineer shall publish~~[-]~~ a notice of the
89 application once a week for two successive weeks~~[-, a notice of the application]~~ in a newspaper

90 of general circulation in the county in which the source of the water supply is located and
91 where the water is to be used.

92 (ii) The notice shall ~~[inform the public of the nature of the right for which the~~
93 ~~extension is requested and the reasons for the extension.];~~

94 (A) state that an application has been made; and

95 (B) specify where the interested party may obtain additional information relating to the
96 application.

97 (d) Any interested person may file a written protest with the state engineer against the
98 granting of the application:

99 (i) within 20 days after the notice is published, if the adjudicative proceeding is
100 informal; and

101 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
102 formal.

103 (e) In any proceedings to determine whether the application for extension should be
104 approved or rejected, the state engineer shall follow the procedures and requirements of Title
105 63, Chapter 46b, Administrative Procedures Act.

106 (f) After further investigation, the state engineer may approve or reject the application.

107 (5) (a) Nonuse applications on all or a portion of a water right shall be granted by the
108 state engineer for periods not exceeding five years each, upon a showing of reasonable cause
109 for nonuse.

110 (b) Reasonable causes for nonuse include:

111 (i) demonstrable financial hardship or economic depression;

112 (ii) the initiation of recognized water conservation or efficiency practices, or the
113 operation of a groundwater recharge recovery program approved by the state engineer;

114 (iii) operation of legal proceedings;

115 (iv) the holding of a water right or stock in a mutual water company without use by any
116 public water supply entity to meet the reasonable future requirements of the public;

117 (v) situations where, in the opinion of the state engineer, the nonuse would assist in
118 implementing an existing, approved water management plan;

119 (vi) situations where all or part of the land on which water is used is contracted under
120 an approved state agreement or federal conservation following program;

121 (vii) the loss of capacity caused by deterioration of the water supply or delivery
 122 equipment if the applicant submits, with the application, a specific plan to resume full use of
 123 the water right by replacing, restoring, or improving the equipment; or

124 (viii) any other reasonable cause.

125 (6) (a) Sixty days before the expiration of any extension of time, the state engineer
 126 shall notify the applicant by registered mail or by any form of electronic communication
 127 through which receipt is verifiable, of the date when the extension period will expire.

128 (b) Before the date of expiration, the applicant shall either:

129 (i) file a verified statement with the state engineer setting forth the date on which use of
 130 the water was resumed, and whatever additional information is required by the state engineer;

131 or

132 (ii) apply for a further extension of time in which to resume use of the water according
 133 to the procedures and requirements of this section.

134 (c) Upon receipt of the applicant's properly completed, verified statement, the state
 135 engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if
 136 so, shall issue a certificate of resumption of use of the water as evidenced by the resumed
 137 beneficial use.

138 (7) The appropriator's water right or a portion of the water right ceases and the water
 139 reverts to the public if the:

140 (a) appropriator or the appropriator's successor in interest fails to apply for an
 141 extension of time;

142 (b) state engineer denies the nonuse application; or

143 (c) appropriator or the appropriator's successor in interest fails to apply for a further
 144 extension of time.

145 Section 2. Section **73-3-6** is amended to read:

146 **73-3-6. Publication of notice of application -- Corrections or amendments of**
 147 **applications.**

148 (1) (a) When an application is filed in compliance with this title, the state engineer
 149 shall publish[;] a notice of the application once a week for a period of two successive weeks[;—
 150 ~~notice of the application informing the public of the contents of the application and the~~
 151 ~~proposed plan of development]~~ in a newspaper of general circulation in the county in which the

152 source of supply is located, and where the water is to be used.

153 ~~[(b) (i) The state engineer shall publish the notice in a newspaper of general circulation~~
154 ~~in the county in which the source of supply is located, and where the water is to be used.]~~

155 ~~[(ii) The notice may be published in more than one newspaper.]~~

156 (b) The notice shall:

157 (i) state that an application has been made; and

158 (ii) specify where the interested party may obtain additional information relating to the
159 application.

160 (c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others
161 may be corrected by order of the state engineer either before or after the publication of notice.

162 (2) After publication of notice to water users, the state engineer may authorize
163 amendments or corrections that involve a change of point of diversion, place, or purpose of use
164 of water, only after republication of notice to water users.

165 Section 3. Section **73-3-12** is amended to read:

166 **73-3-12. Time limit on construction and application to beneficial use --**

167 **Extensions -- Procedures and criteria.**

168 (1) As used in this section, "public agency" means a public water supply agency of:

169 (a) the state; or

170 (b) a political subdivision of the state.

171 (2) (a) The construction of the works and the application of water to beneficial use
172 shall be diligently prosecuted to completion within the time fixed by the state engineer.

173 (b) Extensions of time, not exceeding 50 years from the date of approval of the
174 application, except as provided in Subsection (2)(c), may be granted by the state engineer on
175 proper showing of diligence or reasonable cause for delay.

176 (c) Additional extensions of time, beyond 50 years, may be granted by the state
177 engineer on applications held by any public agency, if the public agency can demonstrate the
178 water will be needed to meet the reasonable future requirements of the public.

179 (d) All requests for extension of time shall be made by signed statement and shall be
180 filed in the office of the state engineer on or before the date fixed for filing proof of
181 appropriation.

182 (e) Extensions not exceeding 14 years after the date of approval may be granted by the

183 state engineer upon a sufficient showing by signed statement, but extensions beyond 14 years
184 shall be granted only after application and publication of notice.

185 (f) (i) (A) The state engineer shall publish a notice of the application once ~~[each]~~ a
186 week for two successive weeks, in a newspaper of general circulation, in the county in which
187 the source of the water supply is located and where the water is to be used.

188 ~~[(B) The notice may be published in more than one newspaper.]~~

189 ~~[(ii) (B) The notice shall [inform the public of the diligence claimed and the reason for~~
190 ~~the request.]:~~

191 (I) state that an application has been made; and

192 (II) specify where the interested party may obtain additional information relating to the
193 application.

194 (g) Any person who owns a water right from the source of supply referred to in
195 Subsection (2)(f) or holds an application from that source of supply may file a protest with the
196 state engineer:

197 (i) within 20 days after the notice is published, if the adjudicative proceeding is
198 informal; and

199 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
200 formal.

201 (h) In considering an application to extend the time in which to place water to
202 beneficial use under an approved application, the state engineer shall deny the extension and
203 declare the application lapsed, unless the applicant affirmatively shows that the applicant has
204 exercised or is exercising reasonable and due diligence in working toward completion of the
205 appropriation.

206 (i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall
207 approve the extension.

208 (ii) The approved extension is effective so long as the applicant continues to exercise
209 reasonable diligence in completing the appropriation.

210 (j) The state engineer shall consider the holding of an approved application by any
211 public agency to meet the reasonable future requirements of the public to be reasonable and
212 due diligence within the meaning of this section for the first 50 years. The state engineer may
213 approve extensions beyond 50 years for a public agency, if the agency provides information

214 sufficient to demonstrate the water will be needed to meet the reasonable future requirements
215 of the public.

216 (k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the
217 works to completion, the state engineer may deny the extension or may grant the request in part
218 or upon conditions, including a reduction of the priority of all or part of the application.

219 (3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which
220 proof has not been submitted shall lapse and have no further force or effect after the expiration
221 of 50 years from the date of its approval.

222 (b) If the works are constructed with which to make beneficial use of the water applied
223 for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year
224 period in which to make proof.

225 (c) An application held by a public agency to meet the reasonable future requirements
226 of the public, for which proof of appropriation has not been submitted, shall lapse, unless
227 extended as provided in Subsection (2)(j).

228 Section 4. Section **73-3a-107** is amended to read:

229 **73-3a-107. Publication of notice of application.**

230 (1) (a) When an application is filed in accordance with Section 73-3a-106 and relevant
231 provisions of [~~Title 73,~~] Chapter 3, Appropriation, the state engineer shall publish a notice of
232 the application once a week for a period of two successive weeks [~~a notice of the application~~
233 ~~informing the public of the contents of the application~~] in a newspaper of general circulation in
234 the county in which the water source is located and where the water is to be used.

235 [~~(b) (i) The state engineer shall publish the notice in a newspaper of general circulation~~
236 ~~in the county in which the water source is located and where the water is to be used.~~]

237 (b) The notice shall:

238 (i) state that an application has been made; and

239 (ii) specify where the interested party may obtain additional information relating to the
240 application.

241 [~~(i)~~] (c) The notice may be published in more than one newspaper.

242 (2) Clerical errors, ambiguities, and mistakes in the application that do not prejudice
243 the rights of others may be corrected by order of the state engineer either before or after the
244 publication of notice.

245 (3) If amendments or corrections to the application are made that involve a change of
246 point of diversion, place of use, or purpose of use of water, the notice must be republished.

Legislative Review Note
as of 12-16-02 7:09 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 01-15-03 8:05 AM

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

State Impact

Provisions of this bill will save the Division of Water Rights \$30,000 per year. However, in FY 2004 the division will incur one-time set up costs of \$77,000, which can be handled within exiting budgets.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Dedicated Credits Revenue	\$0	\$0	(\$47,000)	\$30,000
TOTAL	\$0	\$0	(\$47,000)	\$30,000

Individual and Business Impact

Newspapers in which water rights notices are published may see a drop in revenues as the state purchases less space.

Office of the Legislative Fiscal Analyst