

1 **WATER RIGHT APPLICATION FOR**
2 **ELECTRICAL COOPERATIVE**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gordon E. Snow**

6 Senate Sponsor: Kevin T. VanTassell

8 **LONG TITLE**

9 **General Description:**

10 This bill amends a provision relating to the extension of a water right application.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ allows the state engineer to approve an extension of time beyond 50 years for a
- 14 wholesale electrical cooperative to put its water right to beneficial use; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **73-3-12**, as last amended by Laws of Utah 2007, Chapter 136

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **73-3-12** is amended to read:

26 **73-3-12. Time limit on construction and application to beneficial use --**

27 **Extensions -- Procedures and criteria.**

28 (1) As used in this section[~~-, "public~~]:

29 (a) "Public agency" means:

30 ~~[(a)]~~ (i) a public water supply agency of the state or a political subdivision of the state;
31 or

32 ~~[(b)]~~ (ii) the Bureau of Reclamation.

33 (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.

34 (2) (a) ~~[The construction of]~~ An applicant shall construct the works and ~~[the application~~
35 ~~of]~~ apply the water to beneficial use ~~[shall be diligently prosecuted to completion]~~ within the
36 time fixed by the state engineer.

37 (b) ~~[Extensions]~~ Except as provided by Subsection (2)(c), the state engineer may grant
38 an extension of time, not exceeding 50 years from the application's approval date ~~[of approval~~
39 ~~of the application, except as provided in Subsection (2)(c), may be granted by the state engineer~~
40 ~~on proper showing of]~~, if the applicant shows diligence or a reasonable cause for delay.

41 (c) ~~[Additional extensions]~~ The state engineer may grant an extension of time, beyond
42 50 years, ~~[may be granted by the state engineer on applications]~~ on an application held by ~~[any]~~
43 a public agency~~[-]~~ or a wholesale electrical cooperative if the public agency ~~[can demonstrate]~~
44 or wholesale electrical cooperative shows that the water will be needed to meet the reasonable
45 future water or electricity requirements of the public.

46 (d) ~~[All requests]~~ An applicant shall file a request for an extension of time ~~[shall be filed~~
47 ~~in]~~ with the office of the state engineer on or before the date fixed for filing proof of
48 appropriation.

49 (e) ~~[Extensions]~~ The state engineer may grant an extension of time:

50 (i) not exceeding 14 years after the approval date ~~[of approval may be granted by the~~
51 ~~state engineer]~~ upon a sufficient showing~~[-, but extensions]; and~~

52 (ii) beyond 14 years ~~[shall be granted only]~~ after application and publication of notice.

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

56 (ii) The notice shall:

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

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

60 (g) Any person who owns a water right or holds an application from the source of
61 supply referred to in Subsection (2)(f) [~~or holds an application from that source of supply~~] may
62 file a protest with the state engineer:

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

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

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

71 (i) (i) [~~if~~] The state engineer shall approve the extension of time if the applicant shows
72 reasonable and due diligence [~~is shown by the applicant, the state engineer shall approve the~~
73 ~~extension~~].

74 (ii) The approved extension of time is effective so long as the applicant continues to
75 exercise reasonable diligence in completing the appropriation.

76 (j) (i) The state engineer shall consider the holding of an approved application by [~~any~~]
77 a public agency or a wholesale electrical cooperative to meet the reasonable future water or
78 electricity requirements of the public to be reasonable and due diligence within the meaning of
79 this section for the first 50 years.

80 (ii) The state engineer may approve [~~extensions~~] an extension of time beyond 50 years
81 for a public agency or a wholesale electrical cooperative, if the public agency or wholesale
82 electrical cooperative provides information [~~sufficient to demonstrate~~] that shows the water will
83 be needed to meet the reasonable future water or electricity requirements of the public.

84 (k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the
85 works to completion, the state engineer may:

86 (i) deny the extension of time; or [~~may~~]

87 (ii) grant the request in part or upon conditions, including a reduction of the priority of
88 all or part of the application.

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

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

95 (c) An application held by a public agency or a wholesale electrical cooperative to meet
96 the reasonable future water or electricity requirements of the public, for which proof of
97 appropriation has not been submitted, shall lapse, unless extended as provided in Subsection
98 (2)(j).