



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

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To: Brenda Erdoes, Director

From: Adam Sullivan, Acting State Engineer

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Re: Report to the 81st Legislature regarding Assembly Bill 62

Pursuant to Assembly Bill 62 of the 80th Legislature, the Division of Water Resources conducted a survey to determine the manner in which other jurisdictions within the United States manage extensions of time for the perfection of a right to appropriate water. The Division sent letters to 21 western states¹ to solicit information regarding the process for the perfection of a water right to appropriate water; whether the process to perfect a water right allow for extensions of time; and whether there are any restrictions or limitations to the process for seeking extensions of time. The Division received six responses. Each of the states who responded to the survey have a similar water right permitting process to Nevada and require perfection through both the construction of works of diversion as well as the application of the water to a beneficial use. While there are similar processes for perfection of water rights, there are distinct differences in the time limits to perfect those water rights. Each state's response and processes are summarized below.

STATE	RESPONSE SUMMARY
Alaska	Water right permits are issued with maximum time periods to allow for the completion of construction and establish the full use of water. These time periods are established via Alaska Revised Statute AAC 93.120. Pursuant to this statute, the maximum time periods vary from 2 years to 10 years. Further, a water right holder is entitled to seek one extension to time for a period that is equal or less than the original time allowed under the permit.

¹ The survey was set to 21 states who, like Nevada, adhere to the Prior Appropriation Doctrine and issue appropriations of water rights. Most of the eastern states do not appropriate water rights, thus there is no process to perfect or extend the time to perfect the water right. Accordingly, the State Engineer targeted those states with similar processes for the administration of the use of waters within their boundaries.

Idaho	Pursuant to Idaho Code § 42-402, a water right appropriation requires a water right holder to “prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has not control.” Accordingly, a permit is approved for a period of up to 5 years; however, the 5-year period may be extended once for a period not more than 5 years where the applicant makes a “satisfactory showing” of diligence.
Kansas	Water right permits in Kansas are conditioned with a specific time to place the water to actual use. If additional time is necessary to perfect the water right, pursuant to Kansas Administrative Regulation 5-3-7, a written application must be filed that addresses four items: (1) the progress made in perfecting the water right appropriation; (2) the reason that the appropriation has not been perfected; (3) the number of years needed to fully perfect the water right, with a justification for the period of time requested; and (4) if the permit is for an irrigation use, the number of acres of land irrigated during any single calendar year. Extensions of time to perfect a water right are limited to a maximum of 10 years for non-municipal rights. Municipal rights are given an initial 20-years to perfect their right and any future increments are limited to 5-year periods of time.
Wyoming	Wyoming law allows for extensions of time, upon the showing of good cause, to perfect a water right. W.S. §41-4-506. While the statute does not explicitly include a maximum number of extensions of time that may be granted, the Wyoming State Engineer’s Office stated that one or two extensions are generally approved beyond the original permit time. However, anything beyond six or seven years begins to look like speculation in the water right.
North Dakota	North Dakota exempts certain uses (stock, game, fish, domestic, and recreation) where the use is less than 12.5 acre-feet annually to apply for a water right permit. North Dakota allows for extensions of time. However, under North Dakota law, extensions of time cannot be granted if other water right permit applications are pending from a limited source of supply. <i>See</i> North Dakota Century Code 61-04-14.
Oregon	Oregon Administrative Rules (OAR) requires that a water right permit holder complete beneficial use of the water right within one-year of the receiving the permit. OAR 690-330-0010. Oregon law does allow additional time to complete the construction of works and make beneficial use of the water. The process and time periods are dependent on the type of the use of the water right and then further characterized by the source of the water, i.e. either surface water or groundwater. Non-municipal uses of water must apply and the application is determined based upon the following criteria: (1) a complete application was submitted, (2) the permit holder began construction within the time specified in the permit, or the applicable statute, (3) the permit holder can complete the development of the permit within the time requested, and (4) there is good

cause to grant the extension. If the Water Resources Department determines an extension is appropriate, a proposed final order is published, and if no protest is filed, the extension is granted. If a protest is filed, the Department determines the merit of the protest and the matter may be referred to a hearing or judicial review. *See* OAR 690-315-0050

Municipal and Quasi-Municipal uses are subject to a more extensive review process, where the Department reviews whether additional conditions should be placed on an undeveloped portion of the water right based upon hydraulic connectivity to surface waters that may interfere with listed native and migratory fish species. Upon an extensive review, and any conditions on the development of the unused portion of the water right to protect the fish species, the process is similar to non-municipal uses of water. *See* OAR 690-315-0080. Further, municipal and quasi-municipal permit extensions are required to prepare and submit a Water Management and Conservation Plan in accordance with OAR 690-86.

Oregon law does not establish time limits on the perfection of a water right, rather, the restrictions are those conditions relating to impacts to fish species and the ongoing diligence requirements.

The WSWC is conducting a similar survey of member states due to similar interests expressed by other states to obtain additional information regarding the process of acquiring and perfecting water rights. The Division will provide an update to this report following the conclusion and receipt of all responses to the WSWC survey.


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