

1 | **73-3-8. Approval or rejection of an application to appropriate or for a change of use--**
2 | **Requirements for approval -- Application for specified period of time -- Filing of royalty**
3 | **contract for removal of salt or minerals.**

4 | (1) (a) It shall be the duty of the state engineer to approve an application to appropriate or for
5 | a permanent change of use if:

6 | _____(i) there is unappropriated water in the proposed source;

7 | _____(ii) in the case of a permanent change application, the proposed use is based on the
8 | quantity of water that has been placed to beneficial use under a water right, subject to Section 73-
9 | 1-4;

10 | _____(iii) the proposed use will not impair existing rights or interfere with the more beneficial
11 | use of the water;

12 | _____(iv) the proposed plan is physically and economically feasible, unless the application is
13 | filed by the United States Bureau of Reclamation, and would not prove detrimental to the public
14 | welfare;

15 | _____(v) the applicant has the financial ability to complete the proposed works; and

16 | _____(vi) the application was filed in good faith and not for purposes of speculation or
17 | monopoly.

18 | (b) (i) If the state engineer, because of information in the state engineer's possession obtained
19 | either by the state engineer's own investigation or otherwise, has reason to believe that an
20 | application to appropriate water or to make a permanent change of use will interfere with its
21 | more beneficial use for irrigation, domestic or culinary, stock watering, power or mining
22 | development, or manufacturing, or will unreasonably affect public recreation or the natural
23 | stream environment, or will prove detrimental to the public welfare, it is the state engineer's duty
24 | to withhold approval or rejection of the application until the state engineer has investigated the
25 | matter.

26 | (ii) If an application does not meet the requirements of this section, it shall be rejected.

27 | (2) (a) An application to appropriate water for industrial, power, mining development,
28 | manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and
29 | certain period from the time the water is placed to beneficial use under the application, but in no
30 | event may an application be granted for a period of time less than that ordinarily needed to
31 | satisfy the essential and primary purpose of the application or until the water is no longer

32 available as determined by the state engineer.

33 (b) At the expiration of the period fixed by the state engineer the water shall revert to the
34 public and is subject to appropriation as provided by this title.

35 (c) No later than 60 calendar days before the expiration date of the fixed time period, the state
36 engineer shall send notice by mail or by any form of electronic communication through which
37 receipt is verifiable, to the applicant of record.

38 (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water
39 right upon a showing that:

40 (i) the essential purpose of the original application has not been satisfied;

41 (ii) the need for an extension is not the result of any default or neglect by the applicant; and

42 (iii) the water is still available.

43 (e) No extension shall exceed the time necessary to satisfy the primary purpose of the original
44 application.

45 (f) A request for extension of the fixed time period must be filed in writing in the office of the
46 state engineer on or before the expiration date of the application.

47 (3) (a) Before the approval of any application for the appropriation of water from navigable
48 lakes or streams of the state that contemplates the recovery of salts and other minerals there from
49 by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract
50 for the payment of royalties to the state.

51 (b) The approval of an application shall be revoked in the event of the failure of the applicant
52 to comply with terms of the royalty contract.

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54 Amended by Chapter 136, 2007 General Session

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