

Three-Year Review of Regulations on Extensions of Time

Nevada Division of Water Resources
January 8, 2025



Three-Year Review of Regulations on Extension of Time

NEVADA DIVISION OF WATER RESOURCES

BACKGROUND

Pursuant to Nevada Administrative Code (NAC) 533.500, this report summarizes the Division of Water Resources’ three-year review of NAC 533.3590 to 533.500, inclusive, which govern Applications for Extension of Time to file Proof of Completion of Work or Proof of Application of Water to Beneficial Use. To evaluate the effectiveness of these regulations, the Division conducted a review process that included a public meeting and written public comment period. During the meeting, the Division presented data and statistics on the changes to the extension of time process since the regulations were adopted on December 22, 2021. This report summarizes the Division’s findings, public comment received, and actions that the Division may take as a result of this review.

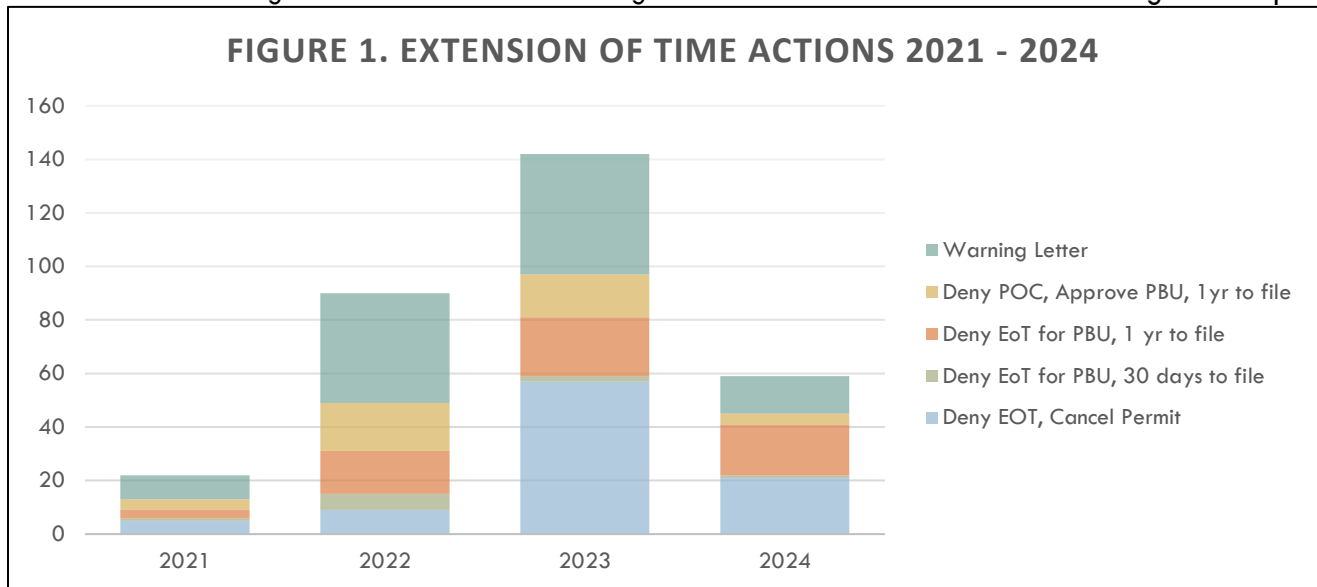
EXAMINING THE IMPACT OF EXTENSION OF TIME REGULATIONS

The Division held a public meeting on October 15, 2024, to solicit comments on extension of time regulations. The meeting was held at the Division’s office in Carson City, with attendees participating both in-person and online. The State Engineer and Division staff participated, sharing insights on the current state of extensions of time and steps taken because of the adopted regulations.

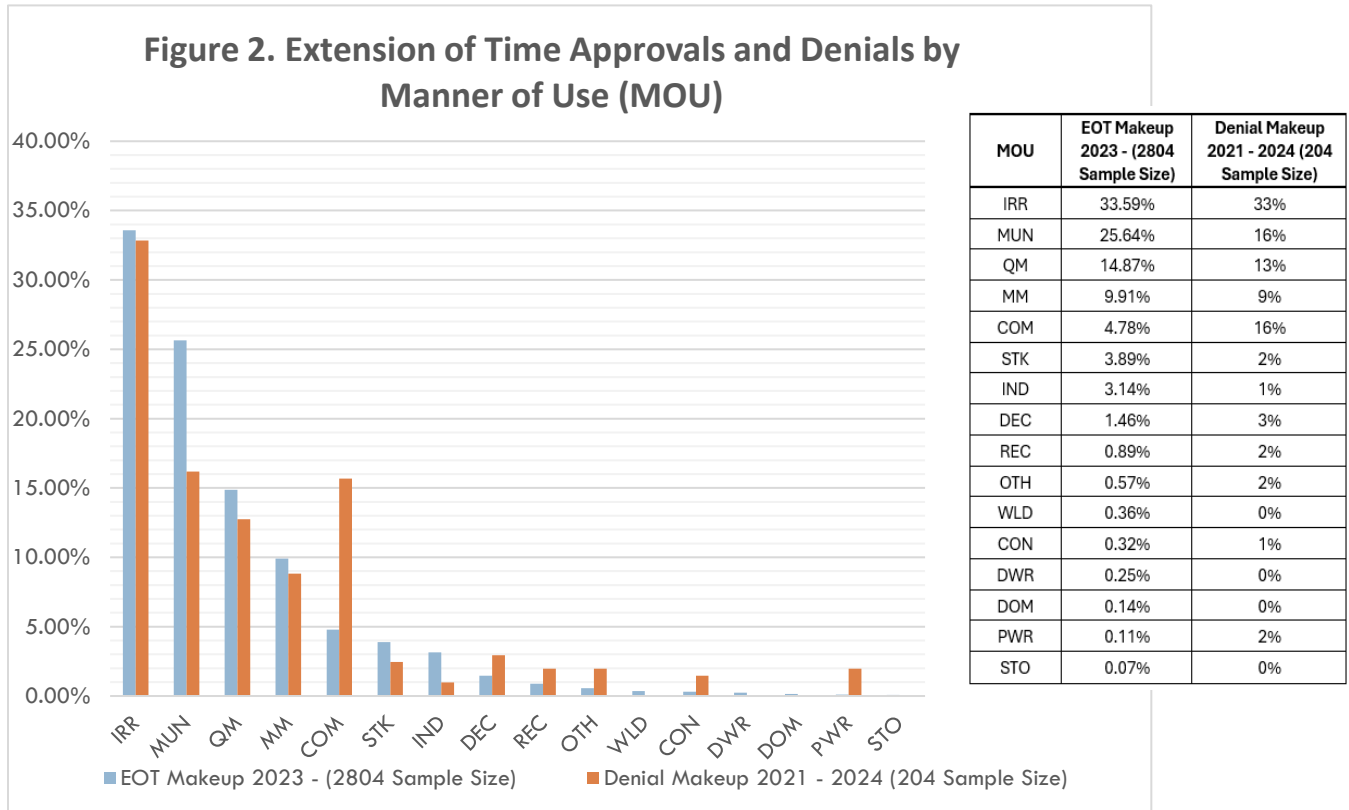
During the meeting, the Division presented statistics and figures related to the volume and types of extension applications received. Comparisons were made between extension applications submitted before and after the regulation took effect.

Extension of Time Application Action and Trends

The Division presented an overview of the total number of actions taken on unperfected water rights since 2021 (Figure 1). These actions include denials, cancellations, and issuance of notices requiring permit holders to provide additional evidence of good faith and reasonable diligence to establish beneficial use. Following the adoption



of the regulations in December 2021, the number of actions increased. The highest number of recorded actions was 142 actions in 2023, which accounts for approximately 5% of the 2,800 applications filed that year. The remaining 95% were approved with no additional action taken.



The Division reviewed the percentage of extensions of time filed by each manner of use (MOU) in 2023 and the denial rates from 2021 to 2024 (Figure 2). The data shows that the denial rate for each MOU align with the percentage of applications filed, indicating that the regulations have roughly equivalent impacts across all MOUs.

Finally, Division staff provided projections for anticipated applications in 2025, estimating 2,527 applications for extension of time (Figure 3). This estimate is based on the number of permits with proof of completion or proof of beneficial use due each year as of the date

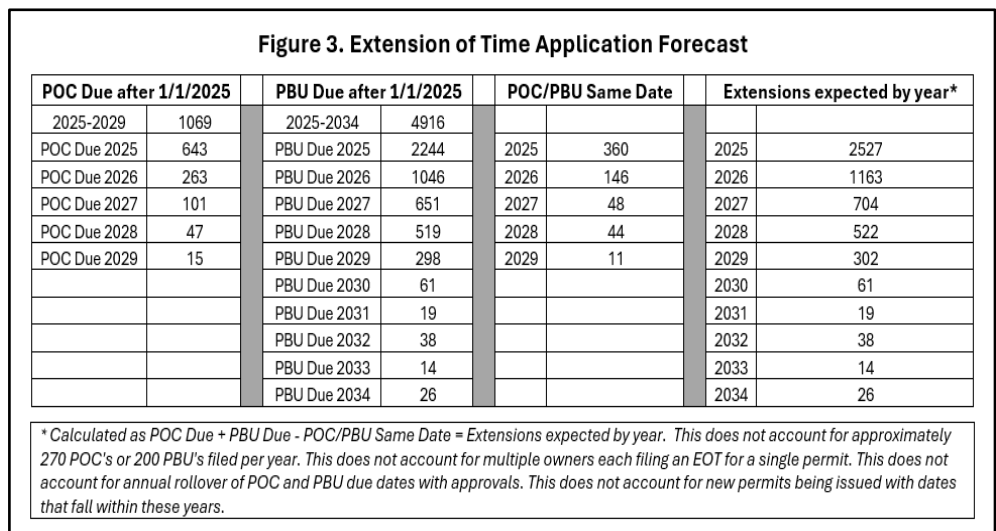


Figure 3 was created (October 2023). Projections for subsequent years do not consider adjustments to due dates as a result of an extension granted or newly issued permits with due dates during this period.

Improved Efficiency and Clarity in Extension of Time Applications

The Division noted improvements in staff efficiency and the ability to address questions regarding extensions of time by utilizing the regulations as a common resource to direct agents and permit holders. This common source of guidance to applicants has improved the information that the Division received with applications.

For instance, the Division is frequently asked what work will demonstrate “good faith and reasonable diligence” toward perfection for an irrigation manner of use. NAC 533.480 outlines some actions that are considered to demonstrate good faith and reasonable diligence, such as well drilling, meter installation, irrigation system construction, and more. These examples serve as a guide rather than exhaustive list, directing applicants to provide detailed and specific information about their progress.

Ultimately, the Division encourages applicants to provide specific and relevant information to support their demonstration of good faith and reasonable diligence when applying for an extension of time.

SUMMARY OF PUBLIC COMMENT AND POTENTIAL REGULATION UPDATES

The Division values public input on the extension of time regulations and potential chapter updates. Below is a summary of key comments, along with some response or additional context provided, including examples. Full public comments are available on the [Division’s website](#).

- **Define how decisions are made regarding the approval of multi-year extensions and the length of time granted to file the required proof.** The Division is considering regulatory additions to outline factors supporting different timelines for submission of proof. Decisions to grant a multi-year extension rely more on specific information submitted with the application than on particular factors. Applicants must provide specific information of what work will be done in the extended time period; a general statement similar to, “in four years the work will be done,” is not sufficient to justify the longer time period during which there is no reporting evidence of diligent progress toward perfection.
- **Improve the form’s content and formatting.** The extension of time forms can be updated outside of the regulatory process. However, many questions included in the form address specific elements or information outlined in the regulation. The Division designed these questions and regulatory elements to be representative, not exhaustive, of the information the State Engineer may find persuasive when evaluating an application. For example, question 24 on Form 1022F, Extension of Time for Proof of Beneficial Use for Irrigation, reads, “Provide any additional information you believe to be relevant to the consideration of this Application... not otherwise addressed in the preceding pages.”
- **Expand the list of the work considered to show “good faith and reasonable diligence,” or provide specific examples of economic factors that support an extension being granted.** The regulation and application outline the minimum requirements for an application for extension of time and are not intended to be exhaustive. Applicants should include any relevant and persuasive information they believe supports their case. It is important for the information submitted to be detailed and well-supported. For example, a general statement that economic factors have prevented the project from moving forward is not persuasive; a statement that the high cost of fertilizer has impacted the economic viability of planting the entire place of use for the last twelve months, and an example of the differences in those costs, is specific and may be regarded as persuasive, depending upon the totality of unique circumstances in any given case.

- **Support statutory changes to allow extensions longer than five years, recognize conservation efforts, and allow for the perfection of a water right through means other than beneficial use.** Some comments addressed the need for longer extensions of time for certain manners of use, while others suggested that discretion in granting a longer extension of time would be appropriate. Additionally, suggestions were made to recognize “self-curtailement” as a valid form of beneficial use that could justify an extension of time. These issues fall outside of the scope of the regulatory process and require a statutory change. The Division is open to discussions on such changes and encourages stakeholder collaboration to explore these potential changes further.
- **Identify timelines for Division action on applications.** The Division receives thousands of applications for extension of time each year. Consistent with its mission to use the best available science to guide responsible water management decisions, the Division conducts a thorough review of every application, with trained staff evaluating the evidence provided in the application. While timely action is desired by all, ensuring accuracy in the decision-making process must not be compromised. Setting rigid timelines for a decision would be contrary to these objectives and the complexity of the work involved. Instead, complete and thorough applications will help reduce the time a review requires because if the evidence is unambiguous in demonstrating good faith and reasonable diligence, then there is no need for additional review, requests for additional information, or drafting custom letters.
- **Update Division processes.** The Division’s method for processing applications is not addressed in regulation. However, in response to public comments, the Division has updated several processes, allocated additional resources on reviewing extensions of time, and will continue to work to improve specificity of its correspondence to be more informative and useful for applicants. Additionally, the Division will continue working to optimize its internal process.

NEXT STEPS

The Division has reviewed the findings and comments and will initiate a regulatory update to address constructive issues identified during the three-year review. The Division will continue working to improve the efficiency and clarity of its processes that do not require regulatory changes, ensuring better service to applicants and the appropriate evaluation of all extension requests. Following the legislative session, the Division will resume discussions on regulatory changes with the goal of developing revised regulations based on recommendations and advance the rulemaking process with stakeholder input and ongoing dialogue.