

73-3-20 Right to divert appropriated waters into natural streams -- Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse of application.

- (1) Upon application in writing and approval of the state engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like quantity less the quantity lost by evaporation and seepage may be taken out, either above or below the point where emptied into the stream, body of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir must not be deteriorated in quality or diminished in quantity for the purpose used, and the additional water turned in shall bear its share of the expense of maintenance of such reservoir and an equitable proportion of the cost of the reservoir site and its construction. Any person having stored that person's appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as the person's necessities may require if the withdrawal does not interfere with the rights of others.
- (2)
 - (a) The state engineer may require an owner of an approved exchange application to provide:
 - (i) information about the diverting works constructed;
 - (ii) information about the extent to which the development under the exchange has occurred; or
 - (iii) other information the state engineer considers necessary to:
 - (A) ensure that the exchange is taking place;
 - (B) establish that the owner still has a legal interest in the underlying water right used as the basis for the exchange; or
 - (C) determine the quantity of water being exchanged.
 - (b) The owner of an exchange application shall provide the information requested by the state engineer within 60 days after the day on which the owner received the notification from the state engineer.
- (3) The state engineer may lapse an approved exchange application described in Subsection (1) if:
 - (a) the applicant has lost a legal interest in the underlying right used to facilitate the exchange;
 - (b) the exchange can no longer be carried out as stated in the application;
 - (c) the applicant has not complied with the conditions established in approving the exchange; or
 - (d) the applicant fails to provide the information requested by the state engineer under Subsection (2).
- (4)
 - (a) Notwithstanding Section 73-3-18, the state engineer may reinstate an exchange application that was lapsed by the state engineer under Subsection (3), if:
 - (i) the applicant files with the state engineer a written request to reinstate the exchange application;
 - (ii) the exchange application is for a small amount of water, as defined in Section 73-3-5.6;
 - (iii) the applicant demonstrates that, before the exchange application lapsed, the applicant or the applicant's predecessor in interest, in accordance with the exchange application:
 - (A) constructed and occupied a residence; and
 - (B) beneficially used the water at the residence; and
 - (iv) the applicant demonstrates that none of the conditions described in Subsection (3) for lapsing an approved exchange application still exist.
 - (b) The priority of an exchange application reinstated under this section shall be the day on which the applicant files a request to reinstate an exchange application that was lapsed by the state engineer.

Amended by Chapter 429, 2013 General Session