

Representative Ben C. Ferry proposes the following substitute bill:

RAINWATER HARVESTING

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Kerry W. Gibson

LONG TITLE

General Description:

This bill authorizes a public water supplier to allow a person in its service area to capture and beneficially use precipitation under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ authorizes a public water supplier to allow a person in its service area to capture and beneficially use precipitation under certain circumstances;
- ▶ establishes reporting requirements;
- ▶ provides for construction standards designed to prevent water contamination; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-20, as last amended by Laws of Utah 1985, Chapter 140

ENACTS:



26 73-3-20.5, Utah Code Annotated 1953

27

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

29 Section 1. Section 73-3-20 is amended to read:

30 **73-3-20. Right to divert appropriated waters into natural streams --**
31 **Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse**
32 **of application.**

33 ~~[(1) Upon application in writing and approval of the state engineer, any appropriated~~
34 ~~water may, for the purpose of preventing waste and facilitating distribution, be turned from the~~
35 ~~channel of any stream or any lake or other body of water, into the channel of any natural stream~~
36 ~~or natural body of water or into a reservoir constructed across the bed of any natural stream,~~
37 ~~and commingled with its waters, and a like quantity less the quantity lost by evaporation and~~
38 ~~seepage may be taken out, either above or below the point where emptied into the stream, body~~
39 ~~of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir~~
40 ~~must not be deteriorated in quality or diminished in quantity for the purpose used, and the~~
41 ~~additional water turned in shall bear its share of the expense of maintenance of such reservoir~~
42 ~~and an equitable proportion of the cost of the reservoir site and its construction. Any person~~
43 ~~having stored his appropriated water in a reservoir for a beneficial purpose shall be permitted to~~
44 ~~withdraw the water at the times and in the quantities as his necessities may require if the~~
45 ~~withdrawal does not interfere with the rights of others.]~~

46 (1) As used in this section:

47 (a) "Body of water" means a lake, groundwater aquifer, or stream channel.

48 (b) "Exchange appropriated waters" means:

49 (i) (A) to turn and commingle water from one body of water into:

50 (I) another natural body of water; or

51 (II) a reservoir constructed across the bed of a natural stream; and

52 (B) to take out, above or below the point where the water is emptied into the natural

53 body of water or reservoir, the same quantity of water, less the quantity lost by:

54 (I) evaporation; and

55 (II) seepage; or

56 (ii) (A) to reduce the amount of water diverted by a public water supplier under a water

57 right; and

58 (B) to allow a person in the public water supplier's service area to capture and
59 beneficially use precipitation in an amount equal to the reduction in the diversion.

60 (2) The state engineer may approve a written application to exchange appropriated
61 waters:

62 (a) to prevent waste;

63 (b) to facilitate distribution; or

64 (c) (i) in an amount not less than 50 acre-feet; and

65 (ii) as provided in Section 73-3-20.5, to authorize a public water supplier to allow a
66 person in its service area to capture and beneficially use precipitation under the public water
67 supplier's water right.

68 (3) In an exchange of appropriated waters:

69 (a) the original water into which the additional water is turned or commingled may not
70 be deteriorated in quality or diminished in quantity for the purpose used; and

71 (b) the owner of the additional water turned or commingled shall bear the proportionate
72 share of the cost of the reservoir's site and construction.

73 (4) A person who stores appropriated water in a reservoir for a beneficial purpose may
74 withdraw that water at the times and in the quantities the person chooses if the withdrawal does
75 not interfere with the water rights of another person.

76 ~~[(2)]~~ (5) The state engineer may require the owner of record of an approved exchange
77 application to provide information concerning:

78 (a) the diverting works constructed[;];

79 (b) the extent to which the development under the exchange has occurred[;]; and

80 (c) other information the state engineer considers necessary to [insure];

81 (i) ensure the exchange is taking place[-to];

82 (ii) establish that the owner of the exchange [stiff] has a legal interest in the underlying
83 water right used as the basis for the exchange[-, or to arrive at]; and

84 (iii) determine the quantity of water being exchanged. [This information shall be
85 provided by the owner of record of an approved exchange]

86 (6) The owner of record of an approved exchange shall provide the information
87 required under Subsection (5) within 60 days of notification by the state engineer.

88 ~~[(3)]~~ (7) The state engineer may lapse an application made ~~[pursuant to]~~ under this
89 section ~~[under the following conditions]~~ if the:

90 (a) ~~[the]~~ applicant ~~[has lost]~~ does not have a legal interest in the underlying right used
91 to facilitate the exchange;

92 (b) ~~[the]~~ exchange can no longer be carried out as stated in the application;

93 (c) ~~[the]~~ applicant has not complied with the conditions established in approving the
94 exchange; or

95 (d) ~~[the]~~ applicant fails to provide the information as ~~[outlined in]~~ required by
96 Subsection ~~[73-3-20(2)]~~ (5).

97 Section 2. Section **73-3-20.5** is enacted to read:

98 **73-3-20.5. Right to collect precipitation.**

99 (1) (a) A person may apply to a public water supplier, as defined in Section 73-1-4, to
100 capture and beneficially use precipitation.

101 (b) A public water supplier may allow a person in its service area to capture and
102 beneficially use precipitation under the public water supplier's approved exchange application
103 as provided in Section 73-3-20.

104 (2) The public water supplier shall:

105 (a) report annually to the state engineer on:

106 (i) the number and names of persons authorized to capture and beneficially use
107 precipitation under Subsection (1);

108 (ii) the location where a person captures and beneficially uses precipitation under
109 Subsection (1); and

110 (iii) the total amount of precipitation authorized to be captured by a person under
111 Subsection (1);

112 (b) establish construction standards designed to prevent contamination of a public
113 water system by a precipitation collection system; and

114 (c) review a precipitation collection system plan submitted under Subsection (3)(a) to
115 determine if the plan complies with the construction standards established under Subsection
116 (2)(b).

117 (3) A person who has received authorization from a public water supplier to capture
118 and beneficially use precipitation under the public water supplier's water right and approved

119 exchange application shall:

120 (a) submit a plan for a precipitation collection system to the public water supplier; and

121 (b) comply with construction standards established under Subsection (2)(b).