

**Representative Wayne A. Harper** 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:

- ▶ provides for the collection and use of precipitation without obtaining a water right under certain conditions;
- ▶ 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:



26 73-3-1, Utah Code Annotated 1953  
27 73-3-20, as last amended by Laws of Utah 1985, Chapter 140

28 ENACTS:

29 73-3-20.5, Utah Code Annotated 1953



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

32 Section 1. Section 73-3-1 is amended to read:

33 **73-3-1. Appropriation -- Manner of acquiring water rights.**

34 ~~[Rights] (1) A person may only acquire a right~~ to the use of the unappropriated public  
35 waters in this state ~~[may be acquired only]~~ as provided for in this title. ~~[No appropriation of~~  
36 ~~water may be made and no rights to the use thereof initiated and no notice of intent to~~  
37 ~~appropriate shall be recognized except application for such appropriation first be made to the~~  
38 ~~state engineer in the manner hereinafter provided, and not otherwise. The]~~

39 (2) The appropriation of public waters in the state shall comply with the requirements  
40 of this title.

41 (3) Except as provided in Subsection (7), a person obtaining, initiating the use of, or  
42 providing notice of intent to appropriate a water right shall comply with the requirements of  
43 this chapter.

44 (4) A person shall make an appropriation [must be for some] for a useful and beneficial  
45 purpose[~~, and, as between~~].

46 (5) (a) Between appropriators, the one first in time [shall be] is first in rights[;  
47 provided, that when a].

48 (b) A use designated by an application to appropriate any of the unappropriated waters  
49 of the state ~~that~~ would materially interfere with a more beneficial use of [such] the water[~~, the~~  
50 application] shall be dealt with as provided in Section 73-3-8. [No]

51 (6) A person may not acquire a right to the use of water either appropriated or  
52 unappropriated [can be acquired] by adverse use or adverse possession.

53 (7) Notwithstanding the requirements of Section 73-3-2, a person may:

54 (a) directly capture and store precipitation in storage containers with a maximum  
55 capacity of 55 gallons per container; and

56 (b) place the water captured and stored under Subsection (7)(a) to beneficial use.

57 Section 2. Section **73-3-20** is amended to read:

58 **73-3-20. Right to divert appropriated waters into natural streams --**  
 59 **Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse**  
 60 **of application.**

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

74 (1) As used in this section:

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

76 (b) "Exchange appropriated waters" means:

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

78 (I) another natural body of water; or

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

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

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

82 (I) evaporation; and

83 (II) seepage; or

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

85 right; and

86 (B) to allow a person in the public water supplier's service area to capture and

87 beneficially use precipitation in an amount equal to the reduction in the diversion.

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

90 (a) to prevent waste;

91 (b) to facilitate distribution; or

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

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

96 (3) In an exchange of appropriated waters:

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

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

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

104 ~~[(2)]~~ (5) The state engineer may require the owner of record of an approved exchange  
105 application to provide information concerning:

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

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

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

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

110 (ii) establish ~~that~~ the owner of the exchange [still] has a legal interest in the underlying  
111 water right used as the basis for the exchange[;or to arrive at]; and

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

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

116 ~~[(3)]~~ (7) The state engineer may lapse an application made [pursuant to] under this  
117 section [under the following conditions] if the:

118 (a) [the] applicant [has lost] does not have a legal interest in the underlying right used

119 to facilitate the exchange;

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

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

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

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

126 **73-3-20.5. Right to collect precipitation.**

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

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

132 (2) The public water supplier shall:

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

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

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

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

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

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

145 (3) A person who has received authorization from a public water supplier to capture  
146 and beneficially use precipitation under the public water supplier's water right and approved  
147 exchange application shall:

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

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

