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**DIVERSION OF WATER**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Joel K. Briscoe**

Senate Sponsor: Ralph Okerlund

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**LONG TITLE**

**General Description:**

This bill allows the state engineer to reinstate a lapsed exchange application under certain conditions.

**Highlighted Provisions:**

This bill:

- ▶ allows the state engineer to reinstate a lapsed exchange application for a small amount of water under certain conditions;
- ▶ establishes the date of priority for a reinstated exchange application; and
- ▶ makes technical changes.

**Money 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

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

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

**73-3-20. Right to divert appropriated waters into natural streams --**



28 **Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse**  
29 **of application.**

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

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

45 (i) information about the diverting works constructed~~[-];~~;

46 (ii) information about the extent to which the development under the exchange has  
47 occurred~~[-and];~~ or

48 (iii) other information the state engineer considers necessary to ~~[insure]~~:

49 (A) ensure that the exchange is taking place~~[-to];~~

50 (B) establish that the owner ~~[of the exchange]~~ still has a legal interest in the underlying  
51 water right used as the basis for the exchange~~[-];~~ or ~~[to arrive at]~~

52 (C) determine the quantity of water being exchanged. ~~[This information shall be~~  
53 ~~provided by the owner of record of an approved exchange within 60 days of notification by the~~  
54 ~~state engineer.]~~

55 (b) The owner of an exchange application shall provide the information requested by  
56 the state engineer within 60 days after the day on which the owner received the notification  
57 from the state engineer.

58 (3) The state engineer may lapse an approved exchange application ~~[made pursuant to~~

59 ~~this section under the following conditions]~~ described in Subsection (1) if:

60 (a) the applicant has lost a legal interest in the underlying right used to facilitate the  
61 exchange;

62 (b) the exchange can no longer be carried out as stated in the application;

63 (c) the applicant has not complied with the conditions established in approving the  
64 exchange; or

65 (d) the applicant fails to provide the information [~~as outlined in Subsection~~  
66 ~~73-3-20(2)-:] requested by the state engineer under Subsection (2).~~

67 (4) (a) Notwithstanding Section 73-3-18, the state engineer may reinstate an exchange  
68 application that was lapsed by the state engineer under Subsection (3), if:

69 (i) the applicant files with the state engineer a written request to reinstate the exchange  
70 application;

71 (ii) the exchange application is for a small amount of water, as defined in Section  
72 73-3-5.6;

73 (iii) the applicant demonstrates that, before the exchange application lapsed, the  
74 applicant or the applicant's predecessor in interest, in accordance with the exchange  
75 application:

76 (A) constructed and occupied a residence; and

77 (B) beneficially used the water at the residence; and

78 (iv) the applicant demonstrates that none of the conditions described in Subsection (3)  
79 for lapsing an approved exchange application still exist.

80 (b) Notwithstanding Section 73-3-18, the priority of an exchange application reinstated  
81 under this section shall be the day on which the applicant files a request to reinstate an  
82 exchange application that was lapsed by the state engineer.

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**Legislative Review Note**  
**as of 2-6-12 4:33 PM**

**Office of Legislative Research and General Counsel**