

1 **MANAGEMENT OF WATER RIGHTS AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill addresses the management of water rights in a critical management area.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ allows a local district to hold certain water rights for recharge;
- 11 ▶ addresses the requirements of a groundwater management plan;
- 12 ▶ provides that artificially recharging a groundwater basin is a beneficial use of water
- 13 in a critical management area; and
- 14 ▶ makes technical changes.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **17B-1-202**, as last amended by Laws of Utah 2010, Chapters 150 and 159

22 **73-5-15**, as last amended by Laws of Utah 2009, Chapter 388

23

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

25 Section 1. Section **17B-1-202** is amended to read:

26 **17B-1-202. Local district may be created -- Services that may be provided --**

27 **Limitations.**

28 (1) (a) A local district may be created as provided in this part to provide within its
29 boundaries service consisting of:

- 30 (i) the operation of an airport;
- 31 (ii) the operation of a cemetery;
- 32 (iii) fire protection, paramedic, and emergency services;

- 33 (iv) garbage collection and disposal;
- 34 (v) health care, including health department or hospital service;
- 35 (vi) the operation of a library;
- 36 (vii) abatement or control of mosquitos and other insects;
- 37 (viii) the operation of parks or recreation facilities or services;
- 38 (ix) the operation of a sewage system;
- 39 (x) street lighting;
- 40 (xi) the construction and maintenance of a right-of-way, including:
- 41 (A) a curb;
- 42 (B) a gutter;
- 43 (C) a sidewalk;
- 44 (D) a street;
- 45 (E) a road;
- 46 (F) a water line;
- 47 (G) a sewage line;
- 48 (H) a storm drain;
- 49 (I) an electricity line;
- 50 (J) a communications line; or
- 51 (K) a natural gas line;
- 52 (xii) transportation, including public transit and providing streets and roads;
- 53 (xiii) the operation of a system, or one or more components of a system, for the
- 54 collection, storage, retention, control, conservation, treatment, supplying, distribution, or
- 55 reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether
- 56 the system is operated on a wholesale or retail level or both;
- 57 (xiv) in accordance with Subsection (1)(c), the development and execution of a
- 58 groundwater management plan in cooperation with and approved by the state engineer in
- 59 accordance with Section 73-5-15;
- 60 (xv) law enforcement service; or
- 61 (xvi) subject to Subsection (1)(b), the underground installation of an electric utility line
- 62 or the conversion to underground of an existing electric utility line.
- 63 (b) Each local district that provides the service of the underground installation of an

64 electric utility line or the conversion to underground of an existing electric utility line shall, in
65 installing or converting the line, provide advance notice to and coordinate with the utility that
66 owns the line.

67 (c) A groundwater management plan described in Subsection (1)(a)(xiv) may include
68 the banking of groundwater rights by a local district in a critical management area as defined in
69 Section 73-5-15 following the adoption of a groundwater management plan by the state
70 engineer under Section 73-5-15.

71 (i) A local district may manage the groundwater rights it acquires under Subsection
72 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan
73 described in Subsection (1)(c).

74 (ii) A groundwater right held by a local district to satisfy the provisions of a
75 groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

76 (iii) (A) A local district may divest itself of a groundwater right subject to a
77 determination that the groundwater right is not required to facilitate the groundwater
78 management plan described in Subsection (1)(c).

79 (B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section
80 73-1-4 beginning on the date of divestiture.

81 (iv) Upon a determination by the state engineer that an area is no longer a critical
82 management area, a water right held by the local district is subject to Section 73-1-4.

83 (v) A local district created in accordance with Subsection (1)(a)(xiv) to develop and
84 execute a groundwater management plan may hold or acquire a right to surface waters that are
85 naturally tributary to the groundwater basin subject to the groundwater management plan if the
86 surface waters are appropriated in accordance with Title 73, Water and Irrigation, and used in
87 accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act.

88 (2) For purposes of this section:

89 (a) "Operation" means all activities involved in providing the indicated service
90 including acquisition and ownership of property reasonably necessary to provide the indicated
91 service and acquisition, construction, and maintenance of facilities and equipment reasonably
92 necessary to provide the indicated service.

93 (b) "System" means the aggregate of interrelated components that combine together to
94 provide the indicated service including, for a sewage system, collection and treatment.

95 (3) (a) A local district may not be created to provide and may not after its creation
96 provide more than four of the services listed in Subsection (1).

97 (b) Subsection (3)(a) may not be construed to prohibit a local district from providing
98 more than four services if, before April 30, 2007, the local district was authorized to provide
99 those services.

100 (4) (a) Except as provided in Subsection (4)(b), a local district may not be created to
101 provide and may not after its creation provide to an area the same service already being
102 provided to that area by another political subdivision, unless the other political subdivision
103 gives its written consent.

104 (b) For purposes of Subsection (4)(a), a local district does not provide the same service
105 as another political subdivision if it operates a component of a system that is different from a
106 component operated by another political subdivision but within the same:

107 (i) sewage system; or

108 (ii) water system.

109 (5) (a) Except for a local district in the creation of which an election is not required
110 under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the
111 unincorporated area of one or more counties and all or part of one or more municipalities.

112 (b) The area of a local district need not be contiguous.

113 (6) For a local district created before May 5, 2008, the authority to provide fire
114 protection service also includes the authority to provide:

115 (a) paramedic service; and

116 (b) emergency service, including hazardous materials response service.

117 (7) A local district created before May 11, 2010, authorized to provide the construction
118 and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection
119 (1)(a)(xi) on or after May 11, 2010.

120 Section 2. Section **73-5-15** is amended to read:

121 **73-5-15. Groundwater management plan.**

122 (1) As used in this section:

123 (a) "Critical management area" means a groundwater basin in which the groundwater
124 withdrawals consistently exceed the safe yield.

125 (b) "Safe yield" means the amount of groundwater that can be withdrawn from a

126 groundwater basin over a period of time without exceeding the long-term recharge of the basin
127 or unreasonably affecting the basin's physical and chemical integrity.

128 (2) (a) The state engineer may regulate groundwater withdrawals within a specific
129 groundwater basin by adopting a groundwater management plan in accordance with this section
130 for any groundwater basin or aquifer or combination of hydrologically connected groundwater
131 basins or aquifers.

132 (b) The objectives of a groundwater management plan are to:

133 (i) limit groundwater withdrawals to safe yield;

134 (ii) protect the physical integrity of the aquifer; and

135 (iii) protect water quality.

136 (c) The state engineer shall adopt a groundwater management plan for a groundwater
137 basin if more than 1/3 of the water right owners in the groundwater basin request that the state
138 engineer adopt a groundwater management plan.

139 (3) (a) In developing a groundwater management plan, the state engineer may consider:

140 (i) the hydrology of the groundwater basin;

141 (ii) the physical characteristics of the groundwater basin;

142 (iii) the relationship between surface water and groundwater, including whether the
143 groundwater should be managed in conjunction with hydrologically connected surface waters;

144 (iv) the conjunctive management of water rights to facilitate and coordinate the lease,
145 purchase, or voluntary use of water rights subject to the groundwater management plan;

146 [~~(iv)~~] (v) the geographic spacing and location of groundwater withdrawals;

147 [~~(v)~~] (vi) water quality;

148 [~~(vi)~~] (vii) local well interference; and

149 [~~(vii)~~] (viii) other relevant factors.

150 (b) The state engineer shall base the provisions of a groundwater management plan on
151 the principles of prior appropriation.

152 (c) (i) The state engineer shall use the best available scientific method to determine
153 safe yield.

154 (ii) As hydrologic conditions change or additional information becomes available, safe
155 yield determinations made by the state engineer may be revised by following the procedures
156 listed in Subsection (5).

157 (4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a
158 groundwater basin shall be limited to the basin's safe yield.

159 (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer
160 shall:

161 (A) determine the groundwater basin's safe yield; and

162 (B) adopt a groundwater management plan for the groundwater basin.

163 (iii) If the state engineer determines that groundwater withdrawals in a groundwater
164 basin exceed the safe yield, the state engineer shall regulate groundwater rights in that
165 groundwater basin based on the priority date of the water rights under the groundwater
166 management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a
167 different distribution.

168 (iv) A groundwater management plan shall include a list of each groundwater right in
169 the proposed groundwater management area known to the state engineer identifying the water
170 right holder, the land to which the groundwater right is appurtenant, and any identification
171 number the state engineer uses in the administration of water rights.

172 (b) When adopting a groundwater management plan for a critical management area, the
173 state engineer shall, based on economic and other impacts to an individual water user or a local
174 community caused by the implementation of safe yield limits on withdrawals, allow gradual
175 implementation of the groundwater management plan.

176 (c) (i) In consultation with the state engineer, water users in a groundwater basin may
177 agree to participate in a voluntary arrangement for managing withdrawals at any time, either
178 before or after a determination that groundwater withdrawals exceed the groundwater basin's
179 safe yield.

180 (ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other
181 law.

182 (iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than
183 all of the water users in a groundwater basin does not affect the rights of water users who do
184 not agree to the voluntary arrangement.

185 (5) To adopt a groundwater management plan, the state engineer shall:

186 (a) give notice as specified in Subsection (7) at least 30 days before the first public
187 meeting held in accordance with Subsection (5)(b):

- 188 (i) that the state engineer proposes to adopt a groundwater management plan;
- 189 (ii) describing generally the land area proposed to be included in the groundwater
190 management plan; and
- 191 (iii) stating the location, date, and time of each public meeting to be held in accordance
192 with Subsection (5)(b);
- 193 (b) hold one or more public meetings in the geographic area proposed to be included
194 within the groundwater management plan to:
- 195 (i) address the need for a groundwater management plan;
- 196 (ii) present any data, studies, or reports that the state engineer intends to consider in
197 preparing the groundwater management plan;
- 198 (iii) address safe yield and any other subject that may be included in the groundwater
199 management plan;
- 200 (iv) outline the estimated administrative costs, if any, that groundwater users are likely
201 to incur if the plan is adopted; and
- 202 (v) receive any public comments and other information presented at the public
203 meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);
- 204 (c) receive and consider written comments concerning the proposed groundwater
205 management plan from any person for a period determined by the state engineer of not less
206 than 60 days after the day on which the notice required by Subsection (5)(a) is given;
- 207 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,
208 publish notice:
- 209 (A) that a draft of the groundwater management plan has been proposed; and
210 (B) specifying where a copy of the draft plan may be reviewed; and
- 211 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of
212 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
- 213 (e) provide notice of the adoption of the groundwater management plan.
- 214 (6) A groundwater management plan shall become effective on the date notice of
215 adoption is completed under Subsection (7), or on a later date if specified in the plan.
- 216 (7) (a) A notice required by this section shall be:
- 217 (i) published:
- 218 (A) once a week for two successive weeks in a newspaper of general circulation in

219 each county that encompasses a portion of the land area proposed to be included within the
220 groundwater management plan; and

221 (B) in accordance with Section 45-1-101 for two weeks;

222 (ii) published conspicuously on the state engineer's Internet website; and

223 (iii) mailed to each of the following that has within its boundaries a portion of the land
224 area to be included within the proposed groundwater management plan:

225 (A) county;

226 (B) incorporated city or town;

227 (C) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District
228 Act;

229 (D) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;

230 (E) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;

231 (F) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;

232 (G) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan
233 Water District Act;

234 (H) special service district providing water, sewer, drainage, or flood control services,
235 under Title 17D, Chapter 1, Special Service District Act;

236 (I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water
237 Conservancy District Act; and

238 (J) conservation district, under Title 17D, Chapter 3, Conservation District Act.

239 (b) A notice required by this section is effective upon substantial compliance with
240 Subsections (7)(a)(i) through (iii).

241 (8) A groundwater management plan may be amended in the same manner as a
242 groundwater management plan may be adopted under this section.

243 (9) The existence of a groundwater management plan does not preclude any otherwise
244 eligible person from filing any application or challenging any decision made by the state
245 engineer within the affected groundwater basin.

246 (10) (a) A person aggrieved by a groundwater management plan may challenge any
247 aspect of the groundwater management plan by filing a complaint within 60 days after the
248 adoption of the groundwater management plan in the district court for any county in which the
249 groundwater basin is found.

250 (b) Notwithstanding Subsection (9), a person may challenge the components of a
251 groundwater management plan only in the manner provided by Subsection (10)(a).

252 (c) An action brought under this Subsection (10) is reviewed de novo by the district
253 court.

254 (d) A person challenging a groundwater management plan under this Subsection (10)
255 shall join the state engineer as a defendant in the action challenging the groundwater
256 management plan.

257 (e) (i) Within 30 days after the day on which a person files an action challenging any
258 aspect of a groundwater management plan under Subsection (10)(a), the person filing the action
259 shall publish notice of the action:

260 (A) in a newspaper of general circulation in the county in which the district court is
261 located; and

262 (B) in accordance with Section 45-1-101 for two weeks.

263 (ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for
264 two consecutive weeks.

265 (iii) The notice required by Subsection (10)(e)(i) shall:

266 (A) identify the groundwater management plan the person is challenging;

267 (B) identify the case number assigned by the district court;

268 (C) state that a person affected by the groundwater management plan may petition the
269 district court to intervene in the action challenging the groundwater management plan; and

270 (D) list the address for the clerk of the district court in which the action is filed.

271 (iv) (A) Any person affected by the groundwater management plan may petition to
272 intervene in the action within 60 days after the day on which notice is last published under
273 Subsections (10)(e)(i) and (ii).

274 (B) The district court's treatment of a petition to intervene under this Subsection
275 (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.

276 (v) A district court in which an action is brought under Subsection (10)(a) shall
277 consolidate all actions brought under that Subsection and include in the consolidated action any
278 person whose petition to intervene is granted.

279 (11) A groundwater management plan adopted or amended in accordance with this
280 section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative

281 Rulemaking Act.

282 (12) (a) Recharge and recovery projects permitted under Chapter 3b, Groundwater
283 Recharge and Recovery Act, are exempted from this section.

284 (b) In a critical management area, the artificial recharge of a groundwater basin done
285 using surface waters that are naturally tributary to the groundwater basin with a valid recharge
286 permit, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act,
287 constitutes a beneficial use of the water in accordance with Section 73-1-3, despite the
288 recharged water not being recovered under a recovery permit.

289 (13) Nothing in this section may be interpreted to require the development,
290 implementation, or consideration of a groundwater management plan as a prerequisite or
291 condition to the exercise of the state engineer's enforcement powers under other law, including
292 powers granted under Section 73-2-25.

293 (14) A groundwater management plan adopted in accordance with this section may not
294 apply to the dewatering of a mine.

295 (15) (a) A groundwater management plan adopted by the state engineer before May 1,
296 2006, remains in force and has the same legal effect as it had on the day on which it was
297 adopted by the state engineer.

298 (b) If a groundwater management plan that existed before May 1, 2006, is amended on
299 or after May 1, 2006, the amendment is subject to this section's provisions.