

**WATER RIGHTS BOARD**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dennis E. Stowell**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates the Water Rights Board.

**Highlighted Provisions:**

This bill:

▶ creates a Water Rights Board as the policymaking board for the state engineer and the Division of Water Rights;

▶ authorizes the Water Rights Board to:

- set fees;
- make rules;
- review a final order of the state engineer or the Division of Water Rights;
- recommend to the governor the suspension or restoration of the appropriation of

surplus water;

- recommend to the Legislature amendments to or enactments of water law; and
- submit nominations to the governor for the state engineer appointment;

▶ requires the governor to appoint the state engineer from names submitted by the Water Rights Board;

▶ revokes the authority of the state engineer to:

- make rules;
- set fees;
- recommend to the governor the suspension or restoration of the appropriation of



28 surplus water; and  
29       • recommend to the Legislature amendments to or enactments of water law;  
30       ▶ revokes the authority of the Division of Water Rights to:  
31       • set a bond amount; and  
32       • make rules; and  
33       ▶ authorizes an aggrieved person to request administrative or judicial review of a final  
34 order of the state engineer or the Division of Water Rights.

**35 Monies Appropriated in this Bill:**

36       None

**37 Other Special Clauses:**

38       None

**39 Utah Code Sections Affected:**

40 **AMENDS:**

- 41       **73-1-10**, as last amended by Laws of Utah 2003, Chapter 298
- 42       **73-2-1**, as last amended by Laws of Utah 2007, Chapter 329
- 43       **73-2-1.5**, as last amended by Laws of Utah 2005, Chapter 33
- 44       **73-2-10**, as last amended by Laws of Utah 1983, Chapter 201
- 45       **73-2-14**, as last amended by Laws of Utah 2007, Chapter 314
- 46       **73-2-25**, as last amended by Laws of Utah 2007, Chapter 136
- 47       **73-2-26**, as enacted by Laws of Utah 2005, Chapter 33
- 48       **73-3-5.6**, as enacted by Laws of Utah 1995, Chapter 121
- 49       **73-3-14**, as last amended by Laws of Utah 1987, Chapter 161
- 50       **73-3-16**, as last amended by Laws of Utah 1998, Chapter 33
- 51       **73-3-23**, Utah Code Annotated 1953
- 52       **73-3-25**, as last amended by Laws of Utah 2004, Chapter 191
- 53       **73-3a-104**, as enacted by Laws of Utah 1991, Chapter 234
- 54       **73-3b-104**, as enacted by Laws of Utah 1991, Chapter 146
- 55       **73-3b-201**, as last amended by Laws of Utah 1995, Chapter 28
- 56       **73-3b-204**, as last amended by Laws of Utah 1995, Chapter 28
- 57       **73-3b-302**, as last amended by Laws of Utah 1995, Chapter 28
- 58       **73-3c-302**, as enacted by Laws of Utah 2006, Chapter 179

- 59            **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136
- 60            **73-5-15**, as last amended by Laws of Utah 2007, Chapters 179 and 329
- 61            **73-5a-101**, as enacted by Laws of Utah 1990, Chapter 319
- 62            **73-5a-105**, as enacted by Laws of Utah 1990, Chapter 319
- 63            **73-5a-203**, as enacted by Laws of Utah 1990, Chapter 319
- 64            **73-5a-304**, as enacted by Laws of Utah 1990, Chapter 319
- 65            **73-5a-401**, as enacted by Laws of Utah 1990, Chapter 319
- 66            **73-5a-403**, as enacted by Laws of Utah 1990, Chapter 319
- 67            **73-5a-502**, as last amended by Laws of Utah 1996, Chapter 264
- 68            **73-5a-602**, as enacted by Laws of Utah 1990, Chapter 319
- 69            **73-6-1**, Utah Code Annotated 1953
- 70            **73-6-2**, Utah Code Annotated 1953
- 71            **73-22-5**, as last amended by Laws of Utah 1987, Chapter 161
- 72            **73-22-6**, as enacted by Laws of Utah 1981, Chapter 188
- 73            **73-22-10**, as last amended by Laws of Utah 1987, Chapter 161

74 ENACTS:

- 75            **73-2-29**, Utah Code Annotated 1953
- 76            **73-2-30**, Utah Code Annotated 1953
- 77            **73-2-31**, Utah Code Annotated 1953



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

80            Section 1. Section **73-1-10** is amended to read:

81            **73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording**  
82 **of deed -- Report of water right conveyance.**

83            (1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a  
84 diligence claim to the use of surface or underground water, or a water user’s claim filed in  
85 general determination proceedings, shall be transferred by deed in substantially the same  
86 manner as is real estate.

87            (b) The deed must be recorded in the office of the recorder of the county where the  
88 point of diversion of the water is located and in the county where the water is used.

89            (c) A recorded deed of a water right shall from the time of its recording in the office of

90 the county recorder constitute notice of its contents to all persons.

91 (2) The right to the use of water evidenced by shares of stock in a corporation shall be  
92 transferred in accordance with the procedures applicable to securities set forth in Title 70A,  
93 Chapter 8, Uniform Commercial Code - Investment Securities.

94 (3) (a) To update water right ownership on the records of the state engineer, a water  
95 right owner shall submit a report of water right conveyance to the state engineer.

96 (b) The report of water right conveyance shall be on forms provided by the state  
97 engineer.

98 (c) The report shall be prepared by:

99 (i) or prepared under the direction of and certified by, any of the following persons  
100 licensed in Utah:

101 (A) an attorney;

102 (B) a professional engineer;

103 (C) a title insurance producer; or

104 (D) a professional land surveyor; or

105 (ii) the water right owner as authorized by rule of the [~~state engineer~~] Water Rights  
106 Board.

107 (d) The filing and processing of a report of water right conveyance with the state  
108 engineer is neither an adjudication of water right ownership nor an opinion as to title or validity  
109 of the water right.

110 (e) The [~~state engineer~~] Water Rights Board shall adopt rules that specify:

111 (i) the information required in a report of water right conveyance; and

112 (ii) the procedures for processing the reports.

113 Section 2. Section **73-2-1** is amended to read:

114 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

115 (1) There shall be a state engineer.

116 (2) (a) The state engineer shall:

117 [~~(a)~~] (i) be appointed by the governor with the consent of the Senate;

118 [~~(b)~~] (ii) hold office for the term of four years and until a successor is appointed; and

119 [~~(c)~~] (iii) have five years experience as a practical engineer or the theoretical

120 knowledge, practical experience, and skill necessary for the position.

121           **(b) The governor shall appoint the state engineer from a list of nominees submitted by**  
122 **the Water Rights Board.**

123           (3) (a) The state engineer shall be responsible for the general administrative  
124 supervision of the waters of the state and the measurement, appropriation, apportionment, and  
125 distribution of those waters.

126           (b) The state engineer may secure the equitable apportionment and distribution of the  
127 water according to the respective rights of appropriators.

128           ~~[(4) The state engineer shall make rules, in accordance with Title 63, Chapter 46a,~~  
129 ~~Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title,~~  
130 ~~regarding:]~~

131           ~~[(a) reports of water right conveyances;]~~

132           ~~[(b) the construction of water wells and the licensing of water well drillers;]~~

133           ~~[(c) dam construction and safety;]~~

134           ~~[(d) the alteration of natural streams;]~~

135           ~~[(e) sewage effluent reuse;]~~

136           ~~[(f) geothermal resource conservation; and]~~

137           ~~[(g) enforcement orders and the imposition of fines and penalties.]~~

138           ~~[(5) The state engineer may make rules, in accordance with Title 63, Chapter 46a, Utah~~  
139 ~~Administrative Rulemaking Act, consistent with the purposes and provisions of this title,~~  
140 ~~governing:]~~

141           ~~[(a) water distribution systems and water commissioners;]~~

142           ~~[(b) water measurement and reporting;]~~

143           ~~[(c) ground-water recharge and recovery;]~~

144           ~~[(d) the determination of water rights; and]~~

145           ~~[(e) the form and content of applications and related documents, maps, and reports.]~~

146           ~~[(6)]~~ (4) The state engineer may bring suit in courts of competent jurisdiction to:

147           (a) enjoin the unlawful appropriation, diversion, and use of surface and underground  
148 water without first seeking redress through the administrative process;

149           (b) prevent theft, waste, loss, or pollution of those waters;

150           (c) enable him to carry out the duties of his office; and

151           (d) enforce administrative orders and collect fines and penalties.

152            [(7)] (5) The state engineer may:

153            (a) upon request from the board of trustees of an irrigation district under Title 17B,  
154 Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited  
155 Purpose Local Government Entities - Local Districts, or a special service district under Title  
156 17A, Chapter 2, Part 13, Utah Special Service District Act, that operates an irrigation water  
157 system, cause a water survey to be made of all lands proposed to be annexed to the district in  
158 order to determine and allot the maximum amount of water that could be beneficially used on  
159 the land, with a separate survey and allotment being made for each 40-acre or smaller tract in  
160 separate ownership; and

161            (b) upon completion of the survey and allotment under Subsection [(7)] (5)(a), file with  
162 the district board a return of the survey and report of the allotment.

163            [(8)] (6) (a) The state engineer may establish water distribution systems and define  
164 their boundaries.

165            (b) The water distribution systems shall be formed in a manner that:

- 166            (i) secures the best protection to the water claimants; and
- 167            (ii) is the most economical for the state to supervise.

168            Section 3. Section 73-2-1.5 is amended to read:

169            **73-2-1.5. Procedures -- Adjudicative proceedings.**

170            Except as provided in Sections 63-46b-1 and 73-2-25, the Water Rights Board, the state  
171 engineer, and the Division of Water Rights shall comply with the procedures and requirements  
172 of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

173            Section 4. Section 73-2-10 is amended to read:

174            **73-2-10. Knowledge of waterways and irrigation -- Suggestions as to amendment**  
175 **or enactment of laws.**

176            (1) The state engineer shall become conversant with the waterways of the state and its  
177 needs as to irrigation matters[; and he shall make such suggestions as to the amendment of].

178            (2) The Water Rights Board shall suggest an amendment to existing laws or the  
179 enactment of new laws [as his information and experience shall suggest].

180            Section 5. Section 73-2-14 is amended to read:

181            **73-2-14. Fees -- Deposited as a dedicated credit.**

182            (1) The [~~state engineer~~] Water Rights Board shall charge fees pursuant to Section

183 63-38-3.2 for the following:

184 (a) applications to appropriate water;

185 (b) applications to temporarily appropriate water;

186 (c) applications for permanent or temporary change;

187 (d) applications for exchange;

188 (e) applications for an extension of time in which to resume use of water;

189 (f) applications to appropriate water, or make a permanent or temporary change, for use

190 outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;

191 (g) groundwater recovery permits;

192 (h) diligence claims for surface or underground water filed pursuant to Section

193 73-5-13;

194 (i) republication of notice to water users after amendment of application where

195 required by this title;

196 (j) applications to segregate;

197 (k) requests for an extension of time in which to submit proof of appropriation not to

198 exceed 14 years after the date of approval of the application;

199 (l) requests for an extension of time in which to submit proof of appropriation 14 years

200 or more after the date of approval of the application;

201 (m) groundwater recharge permits;

202 (n) applications for a well driller's license, annual renewal of a well driller's license,

203 and late annual renewal of a well driller's license;

204 (o) certification of copies;

205 (p) preparing copies of documents; and

206 (q) reports of water right conveyance.

207 (2) (a) Fees for the services specified in Subsections (1)(a) through (i) shall be based

208 upon the rate of flow or volume of water.

209 (b) If it is proposed to appropriate by both direct flow and storage, the fee shall be

210 based upon either the rate of flow or annual volume of water stored, whichever fee is greater.

211 (3) Fees collected under this section:

212 (a) shall be deposited in the General Fund as a dedicated credit to be used by the

213 Division of Water Rights; and

214 (b) may only be used by the Division of Water Rights to:  
215 (i) meet the publication of notice requirements under this title; and  
216 (ii) process reports of water right conveyance.

217 Section 6. Section **73-2-25** is amended to read:  
218 **73-2-25. State engineer enforcement powers.**

219 (1) For purposes of this section, "initial order" means one of the following issued by  
220 the state engineer:

221 (a) a notice of violation; or  
222 (b) a cease and desist order.

223 (2) (a) The state engineer may commence an enforcement action under this section if  
224 the state engineer finds that a person:

225 (i) is diverting, impounding, or using water for which no water right has been  
226 established;

227 (ii) is diverting, impounding, or using water in violation of an existing water right;  
228 (iii) violates Section 73-5-4;  
229 (iv) violates Section 73-5-9;  
230 (v) violates a written distribution order from the state engineer;  
231 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed  
232 or bank of a natural stream channel; or  
233 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam  
234 Safety.

235 (b) To commence an enforcement action under this section, the state engineer shall  
236 issue an initial order, which shall include:

237 (i) a description of the violation;  
238 (ii) notice of any penalties to which a person may be subject under Section 73-2-26;  
239 and

240 (iii) notice that the state engineer may treat each day's violation of the provisions listed  
241 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

242 (c) The state engineer's issuance and enforcement of an initial order is exempt from  
243 Title 63, Chapter 46b, Administrative Procedures Act.

244 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

245 ~~[state engineer]~~ the Water Rights Board shall make rules necessary to enforce an initial order,  
246 which shall include:

247 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the  
248 initial order if a person to whom an initial order is issued fails to respond to the order or abate  
249 the violation;

250 (b) the right to a hearing, upon request by a person against whom an initial order is  
251 issued; and

252 (c) provisions for timely issuance of a final order after:

253 (i) the person to whom the initial order is issued fails to respond to the order or abate  
254 the violation; or

255 (ii) a hearing held under Subsection (3)(b).

256 (4) A person may not intervene in an enforcement action commenced under this  
257 section.

258 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the  
259 state engineer shall serve a copy of the final order on the person against whom the order is  
260 issued by:

261 (a) personal service under Utah Rules of Civil Procedure 5; or

262 (b) certified mail.

263 (6) (a) The state engineer's final order may be reviewed by:

264 (i) the Water Rights Board as authorized by Section 73-2-31; or

265 (ii) trial de novo by the district court in:

266 [(†)] (A) Salt Lake County; or

267 [(†)] (B) the county where the violation occurred.

268 (b) A person shall file a petition for administrative or judicial review of the state  
269 engineer's final order issued under this section within 20 days from the day on which the final  
270 order was served on that person.

271 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a  
272 final order issued under this section.

273 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the  
274 state may recover all court costs and a reasonable attorney fee.

275 Section 7. Section **73-2-26** is amended to read:

276 **73-2-26. Administrative penalties.**

277 (1) (a) As part of a final order issued under Section 73-2-25, the state engineer may  
278 order that a person to whom an order is issued:

279 (i) pay an administrative fine not to exceed:

280 (A) \$5,000 for each knowing violation; or

281 (B) \$1,000 for each violation that is not knowing;

282 (ii) replace up to 200% of water taken; and

283 (iii) be liable for any expense incurred by the state engineer or division in investigating  
284 and stopping the violation.

285 (b) The definition of "knowingly" under Subsection 76-2-103(2) shall apply to  
286 determinations under Subsection (1)(a)(i).

287 (c) The penalties described in Subsection (1)(a) shall be in addition to:

288 (i) any criminal penalty established for a violation described in Subsection (1); and

289 (ii) any private right of action.

290 (d) (i) Each day of a continuing violation of the provisions described in Subsection  
291 73-2-25(2)(a) or an initial or final order issued under Section 73-2-25 is a separate violation.

292 (ii) A penalty may not be imposed for a violation of the provisions listed in Subsection  
293 73-2-25(2)(a) or an initial or a final order issued under Section 73-2-25 for a violation  
294 occurring more than 12 months before the day on which a notice of violation is issued.

295 (e) Separate violations under Subsection (1)(d) may be consolidated for resolution in  
296 one enforcement proceeding under Section 73-2-25.

297 (f) The state engineer has discretion to pursue an administrative fine, order requiring  
298 replacement, or both.

299 (2) Before imposing a fine or ordering replacement under Subsection (1), the state  
300 engineer shall consider:

301 (a) the value or quantity of water unlawfully taken, including the cost or difficulty of  
302 replacing the water;

303 (b) the gravity of the violation, including the economic injury or impact to others;

304 (c) whether the person subject to fine or replacement attempted to comply with the  
305 state engineer's orders; and

306 (d) the violator's economic benefit from the violation.

307 (3) (a) The state engineer may require that the water unlawfully taken be replaced after:

308 (i) a person fails to request administrative or judicial review of a final order issued  
309 under Section 73-2-25; or

310 (ii) the completion of administrative or judicial review, including any appeals.

311 (b) The state engineer's order shall require that replacement of water begin within one  
312 year of the day on which:

313 (i) the time period for requesting administrative or judicial review of a final order  
314 issued under Section 73-2-25 expires without a person requesting administrative or judicial  
315 review of the final order; or

316 (ii) the completion of administrative or judicial review, including any appeals.

317 (4) Water replaced under Subsection (3) shall be taken from water that the person  
318 subject to the order requiring replacement would be entitled to use during the replacement  
319 period.

320 (5) (a) If the state engineer issues an order requiring replacement, a copy of the order  
321 shall be placed in the Division of Water Rights' water rights records.

322 (b) The order requiring replacement shall constitute a lien upon the water right affected  
323 if the state engineer files a notice of lien in the office of the county recorder in the county  
324 where the place of use of the water right is located.

325 (c) A notice of lien under Subsection (5)(b) shall include a legal description of the  
326 place of use of the water right.

327 (6) Any monies collected under this section shall be deposited into the General Fund.  
328 Section 8. Section **73-2-29** is enacted to read:

329 **73-2-29. Water Rights Board created.**

330 (1) As used in this section, "board" means the Water Rights Board.

331 (2) There is created the Water Rights Board that is the policymaking board for the state  
332 engineer and the Division of Water Rights.

333 (3) (a) The governor, with the consent of the Senate, shall appoint the following seven  
334 members to the board:

335 (i) one member who:

336 (A) represents an agricultural or livestock interest;

337 (B) owns a surface water right; and

338 (C) is nominated by an organization that promotes agriculture;  
339 (ii) one member who:  
340 (A) represents an agricultural or livestock interest;  
341 (B) owns a groundwater right; and  
342 (C) is nominated by an organization that promotes agriculture;  
343 (iii) one member who:  
344 (A) represents a municipality; and  
345 (B) is nominated by an organization that promotes municipal interests;  
346 (iv) one member who:  
347 (A) represents a county; and  
348 (B) is nominated by an organization that promotes county interests;  
349 (v) one member who:  
350 (A) represents an industrial interest; and  
351 (B) is nominated by an organization that promotes industrial uses of water;  
352 (vi) one member who:  
353 (A) represents a hydroelectric or geothermal energy interest; and  
354 (B) is nominated by an organization that promotes alternative energy; and  
355 (vii) one member who:  
356 (A) represents a fish, wildlife, or recreational interest; and  
357 (B) is nominated by an organization that promotes the instream flow of water.  
358 (b) In appointing a member listed in Subsection (3)(a), the governor shall:  
359 (i) consider geographical distribution; and  
360 (ii) select at least one member who:  
361 (A) is licensed to practice law in the state; and  
362 (B) is knowledgeable about water law.  
363 (c) (i) A nominating organization shall nominate at least three people.  
364 (ii) If the governor rejects all nominations submitted for a member, the nominating  
365 organization shall submit additional names.  
366 (d) If no organization submits a nomination, the governor shall appoint a member that  
367 represents the interest listed in Subsection (3)(a).  
368 (4) (a) Except as provided by Subsection (4)(b), a member shall serve a four year term.

369 (b) The governor shall, at the time of appointment or reappointment, adjust the length  
370 of terms to ensure that the terms of no more than half of the members expire in a fiscal year.

371 (c) When a vacancy occurs on the board for any reason, the governor shall appoint a  
372 replacement for the unexpired term with the consent of the Senate.

373 (5) (a) A board member may not receive compensation or benefits for the member's  
374 services, but may receive per diem and expenses incurred in the performance of the member's  
375 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
376 63A-3-107.

377 (b) A member may decline to receive per diem and expenses for the member's service.

378 (6) (a) The board shall elect one of its members to serve as chair for a term of two  
379 years.

380 (b) All members on the board have equal voting rights on a board matter when present  
381 at a board meeting.

382 (c) Four board members is a quorum for conducting board business.

383 (d) A majority vote of the quorum present is required for an action to be taken by the  
384 board.

385 (7) The board shall meet at each of the Division of Water Rights' regional offices at  
386 least once a year, but may hold other meetings at times and places as scheduled by:

387 (a) the chair; or

388 (b) three members, upon filing a written request for a meeting with the chair.

389 (8) The attorney general shall provide the Water Rights Board with:

390 (a) legal advice; and

391 (b) legal services in the prosecution or defense of an action resulting from the  
392 performance of the board's duties.

393 (9) The Division of Water Rights shall provide necessary administrative and staff  
394 support services to the Water Rights Board.

395 Section 9. Section **73-2-30** is enacted to read:

396 **73-2-30. Water Rights Board -- Powers -- Duties.**

397 (1) The Water Rights Board shall:

398 (a) set policy consistent with this title for the state engineer and the Division of Water  
399 Rights by making rules in accordance with Title 63, Chapter 46a, Utah Administrative

400 Rulemaking Act, and as provided in this title;

401 (b) adopt a fee authorized by this title;

402 (c) in accordance with Section 73-2-31, review an order by the state engineer or the

403 Division of Water Rights;

404 (d) nominate at least three people for the appointment of the state engineer in  
405 accordance with Section 73-2-1; and

406 (e) perform other duties assigned to the Water Rights Board in this title.

407 (2) A rule made by the state engineer or the Division of Water Rights that is in effect  
408 on May 4, 2008 is considered a rule made by the board on May 5, 2008.

409 Section 10. Section **73-2-31** is enacted to read:

410 **73-2-31. Administrative Review by the Water Rights Board.**

411 (1) A person aggrieved by a final order of the state engineer or the Division of Water  
412 Rights:

413 (a) may seek administrative review of the order by the Water Rights Board in  
414 accordance with Section 63-46b-12; and

415 (b) is not required to seek a review by the Water Rights Board before seeking judicial  
416 review of the order in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

417 (2) (a) For purposes of Section 63-46b-12, the Water Rights Board is a superior agency  
418 that may review a final order of the state engineer or the Division of Water Rights.

419 (b) After review of a state engineer's or Division of Water Rights' final order in  
420 accordance with Title 63, Chapter 46b, Administrative Procedures Act, the Water Rights Board  
421 may:

422 (i) take no action;

423 (ii) vacate or remand the order; or

424 (iii) amend the order.

425 (c) The chair of the Water Rights Board shall sign a written order on review as required  
426 by Section 63-46b-12.

427 (3) A person aggrieved by a final order of the Water Rights Board may seek judicial  
428 review of the order in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

429 (4) An order by the state engineer or the Division of Water Rights is final 30 days after  
430 the day on which the order is issued unless stayed, amended, or overturned by:

431 (a) the Water Rights Board under Section 63-46b-12;

432 (b) a district court under Section 63-46b-15; or

433 (c) the Supreme Court under Section 63-46b-16.

434 Section 11. Section **73-3-5.6** is amended to read:

435 **73-3-5.6. Applications to appropriate or permanently change a small amount of**  
436 **water.**

437 (1) The state engineer may approve an application to appropriate or permanently  
438 change a small amount of water necessary to meet the requirements of one residence, 1/4 acre  
439 of irrigable land, and ten cattle or the equivalent amount of water for livestock purposes, if:

440 (a) the state engineer undertakes a thorough investigation of the proposed appropriation  
441 or permanent change;

442 (b) notice is provided in accordance with Subsection (2); and

443 (c) the application complies with [~~the state engineer's~~];

444 (i) the Water Rights Board's regional policies and restrictions **made by rule**; and

445 (ii) Section 73-3-3 or 73-3-8, as applicable.

446 (2) (a) Advertising of an application to appropriate or permanently change a small  
447 amount of water as specified in Subsection (1) shall be at the discretion of the state engineer.

448 (b) If the state engineer finds that the uses proposed by the application may impair  
449 other rights, before approving the application, the state engineer shall give notice of the  
450 application according to Section 73-3-6.

451 (3) An applicant receiving approval under this section shall be responsible for the time  
452 limit of construction and submitting proof of appropriation or permanent change as required  
453 under this chapter.

454 Section 12. Section **73-3-14** is amended to read:

455 **73-3-14. Judicial and administrative review.**

456 (1) (a) Any person aggrieved by an order of the state engineer may obtain;

457 (i) administrative review by the Water Rights Board in accordance with Section  
458 73-2-31; or

459 (ii) judicial review by following the procedures and requirements of Title 63, Chapter  
460 46b, Administrative Procedures Act.

461 (b) Venue for judicial review of informal adjudicative proceedings shall be in the

462 county in which the stream or water source, or some part of it, is located.

463 (2) The state engineer shall be joined as a defendant in all suits to review ~~[his]~~ the state  
464 engineer's decisions, but no judgment for costs or expenses of the litigation may be rendered  
465 against ~~[him]~~ the state engineer.

466 Section 13. Section **73-3-16** is amended to read:

467 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**  
468 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**  
469 **Statement in lieu of proof of appropriation or change.**

470 (1) Sixty days before the date set for the proof of appropriation or proof of change to be  
471 made, the state engineer shall notify the applicant by mail when proof of completion of the  
472 works and application of the water to a beneficial use will be due.

473 (2) On or before the date set for completing the proof in accordance with the  
474 application, the applicant shall file proof with the state engineer on forms furnished by the state  
475 engineer.

476 (3) Except as provided in Subsection (4), the applicant shall submit the following  
477 information:

- 478 (a) a description of the works constructed;
- 479 (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
- 480 (c) the method of applying the water to beneficial use; and
- 481 (d) (i) detailed measurements of water put to beneficial use;
- 482 (ii) the date the measurements were made; and
- 483 (iii) the name of the person making the measurements.

484 (4) (a) On applications filed for appropriation or permanent change of use of water to  
485 provide a water supply for state projects constructed pursuant to Title 73, Chapter 10, Board of  
486 Water Resources - Division of Water Resources, or for federal projects constructed by the  
487 United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its  
488 political subdivisions, public and quasi-municipal corporations, or water users' associations of  
489 which the state, its agencies, political subdivisions, or public and quasi-municipal corporations  
490 are stockholders, the proof shall include:

- 491 (i) a statement indicating construction of the project works has been completed;
- 492 (ii) a description of the major features with appropriate maps, profiles, drawings, and

493 reservoir area-capacity curves;

494 (iii) a description of the point or points of diversion and redirection;

495 (iv) project operation data;

496 (v) a map showing the place of use of water and a statement of the purpose and method

497 of use;

498 (vi) the project plan for beneficial use of water under the applications and the quantity

499 of water required; and

500 (vii) a statement indicating what type of measuring devices have been installed.

501 (b) The director of the Division of Water Resources shall sign proofs for the state

502 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the

503 federal projects specified in Subsection (4)(a).

504 (5) The proof on all applications shall be sworn to by the applicant or the applicant's

505 appointed representative and proof engineer.

506 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall

507 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed

508 professional engineer that show:

509 (i) the location of the completed works;

510 (ii) the nature and extent of the completed works;

511 (iii) the natural stream or source from which and the point where the water is diverted

512 and, in the case of a nonconsumptive use, the point where the water is returned; and

513 (iv) the place of use.

514 (b) The state engineer may waive the filing of maps, profiles, and drawings if in the

515 state engineer's opinion the written proof adequately describes the works and the nature and

516 extent of beneficial use.

517 (7) The completed proof shall conform to rules [~~and standards~~] established by the [~~state~~

518 ~~engineer~~] Water Rights Board.

519 (8) In those areas in which general determination proceedings are pending, or have

520 been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state engineer

521 may petition the district court for permission to:

522 (a) waive the requirements of this section and Section 73-3-17; and

523 (b) permit each owner of an application to file a verified statement to the effect that the

524 applicant has completed the appropriation or change and elects to file a statement of water  
525 users claim in the proposed determination of water rights or any supplement to it in accordance  
526 with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or  
527 proof of change.

528 Section 14. Section **73-3-23** is amended to read:

529 **73-3-23. Replacement of water.**

530 (1) In all cases of appropriations of underground water the right of replacement is  
531 hereby granted to any junior appropriator whose appropriation may diminish the quantity or  
532 injuriously affect the quality of appropriated underground water in which the right to the use  
533 thereof has been established as provided by law.

534 (2) No replacement may be made until application in writing has been made to and  
535 approved by the state engineer.

536 (3) In all cases replacement shall be at the sole cost and expense of the applicant and  
537 subject to ~~[such] rules [and regulations as the state engineer may prescribe]~~ made by the Water  
538 Rights Board.

539 (4) The right of eminent domain is hereby granted to any applicant for the purpose of  
540 replacement as provided herein.

541 Section 15. Section **73-3-25** is amended to read:

542 **73-3-25. Well driller's license -- Bond -- Revocation or suspension for**  
543 **noncompliance.**

544 (1) (a) Every person that constructs a well in the state shall obtain a license from the  
545 state engineer.

546 (b) ~~[The state engineer]~~ In accordance with Title 63, Chapter 46a, Utah Administrative  
547 Rulemaking Act, the Water Rights Board shall enact rules:

548 (i) defining the form, the expiration date, and the renewal cycle of the application for a  
549 license[-]; and

550 (ii) regulating well construction.

551 (c) Well drillers' licenses are not transferable. ~~[The state engineer shall enact rules for~~  
552 ~~well construction according to the procedures and requirements of Title 63, Chapter 46a, Utah~~  
553 ~~Administrative Rulemaking Act.]~~

554 (2) (a) (i) A person who constructs a well in this state must first obtain a license as

555 provided in this section.

556 (ii) Before a well driller's license will be issued, the applicant must file a well driller  
557 bond with the state engineer.

558 (iii) The bond shall be made payable to the Office of the State Engineer.

559 (iv) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
560 the ~~[state engineer]~~ Water Rights Board may make rules to set the amount, form, and general  
561 administrative requirements of a well driller bond. Proper compliance with the provisions of  
562 this section and the rules enacted under the authority of this section are required to obtain or  
563 renew a license.

564 (b) (i) Well drillers shall comply with the rules ~~[enacted by the state engineer]~~ made by  
565 the Water Rights Board under this chapter.

566 (ii) If the state engineer determines, following an investigation, that the licensee has  
567 failed to comply with these rules, the state engineer may revoke or suspend the license, and  
568 exact the bond and deposit the money as a nonlapsing dedicated credit.

569 (iii) The state engineer may expend the funds to investigate or correct any deficiencies  
570 which could adversely affect the public interest resulting from noncompliance with the rules  
571 promulgated under this chapter by any well driller.

572 (iv) The state engineer may refuse to issue a license to a well driller if it appears that  
573 there has been a violation of the rules or a failure to comply with Section 73-3-22.

574 Section 16. Section **73-3a-104** is amended to read:

575 **73-3a-104. Rulemaking power of Water Rights Board.**

576 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
577 ~~[state engineer]~~ Water Rights Board may make rules necessary to administer this chapter.

578 Section 17. Section **73-3b-104** is amended to read:

579 **73-3b-104. Rulemaking power of Water Rights Board.**

580 The ~~[state engineer]~~ Water Rights Board may make rules to administer this chapter in  
581 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

582 Section 18. Section **73-3b-201** is amended to read:

583 **73-3b-201. Application for a recharge permit -- Required information -- Filing**  
584 **fee.**

585 (1) The application for obtaining a groundwater recharge permit shall include the

586 following information:

587 (a) the name and mailing address of the applicant;

588 (b) the name of the groundwater basin or groundwater sub-basin in which the applicant  
589 proposes to operate the project;

590 (c) the name and mailing address of the owner of the land on which the applicant  
591 proposes to operate the project;

592 (d) a legal description of the location of the proposed project;

593 (e) the source and annual quantity of water proposed to be stored underground;

594 (f) evidence of a water right or an agreement to use the water proposed to be stored  
595 underground;

596 (g) the quality of the water proposed to be stored underground and the water quality of  
597 the receiving groundwater aquifer;

598 (h) evidence that the applicant has applied for all applicable water quality permits;

599 (i) a plan of operation for the proposed recharge and recovery project which shall  
600 include:

601 (i) a description of the proposed project;

602 (ii) its design capacity;

603 (iii) a detailed monitoring program; and

604 (iv) the proposed duration of the project;

605 (j) a copy of a study demonstrating[?];

606 (i) the area of hydrologic impact of the project;

607 (ii) that the project is hydrologically feasible;

608 (iii) that the project will not:

609 (A) cause unreasonable harm to land; or

610 (B) impair any existing water right within the area of hydrologic impact; and

611 (iv) the percentage of anticipated recoverable water;

612 (k) evidence of financial and technical capability; and

613 (l) any other information that the state engineer requires.

614 (2) (a) A filing fee must be submitted with the application.

615 (b) The [~~state engineer~~] Water Rights Board shall establish the filing fee in accordance  
616 with Section 63-38-3.2.

617 Section 19. Section **73-3b-204** is amended to read:

618 **73-3b-204. Application for a recovery permit -- Required information.**

619 (1) If a person intends to recharge and recover water, the recovery application and  
620 permit may be filed and processed with the groundwater recharge application and permit.

621 (2) The application for obtaining a recovery permit shall include the following  
622 information:

623 (a) the name and mailing address of the applicant;

624 (b) a legal description of the location of the existing well or proposed new well from  
625 which the applicant intends to recover stored water;

626 (c) a written consent from the owner of the recharge permit;

627 (d) the name and mailing address of the owner of the land from which the applicant  
628 proposes to recover stored water;

629 (e) the name or description of the artificially recharged groundwater aquifer which is  
630 the source of supply;

631 (f) the purpose for which the stored water will be recovered;

632 (g) the depth and diameter of the existing well or proposed new well;

633 (h) a legal description of the area where the stored water is proposed to be used;

634 (i) the design pumping capacity of the existing well or proposed new well; and

635 (j) any other information including maps, drawings, and data that the state engineer  
636 requires.

637 (3) (a) A filing fee must be submitted with the application.

638 (b) The [~~state engineer~~] Water Rights Board shall establish the filing fee in accordance  
639 with Section 63-38-3.2.

640 Section 20. Section **73-3b-302** is amended to read:

641 **73-3b-302. Fee.**

642 (1) The [~~state engineer~~] Water Rights Board shall assess an annual fee, in accordance  
643 with Section 63-38-3.2, on each person who holds a groundwater recharge or recovery permit.

644 (2) The fee shall reflect the division's costs to administer and monitor groundwater  
645 recharge and recovery projects.

646 Section 21. Section **73-3c-302** is amended to read:

647 **73-3c-302. Application to the state engineer.**

- 648 (1) A public agency proposing water reuse shall apply to the state engineer.
- 649 (2) An application for water reuse under Subsection (1) shall be made upon forms  
650 furnished by the state engineer and shall include:
- 651 (a) the name of the applicant;
- 652 (b) a description of the underlying water right;
- 653 (c) an evaluation of the underlying water right's diversion, depletion, and return flow  
654 requirements;
- 655 (d) the estimated quantity of water to be reused;
- 656 (e) the location of the POTW;
- 657 (f) the place, purpose, and extent of the proposed water reuse;
- 658 (g) an evaluation of depletion from the hydrologic system caused by the water reuse;
- 659 and
- 660 (h) any other information consistent with this chapter that is requested by the state  
661 engineer.
- 662 (3) An application under Subsection (1) shall include a copy of a reuse authorization  
663 contract for water reuse proposed by a public agency for any underlying water right not owned  
664 by the public agency.
- 665 (4) In considering an application for water reuse, the state engineer shall comply with:
- 666 (a) Section 73-3-6;
- 667 (b) Section 73-3-7;
- 668 (c) Section 73-3-10; and
- 669 (d) Section 73-3-14.
- 670 (5) In determining whether a proposed water reuse is consistent with the underlying  
671 water right, the state engineer shall conclude that a proposed water reuse is consistent with the  
672 underlying water right if:
- 673 (a) the use of the reuse water does not enlarge the underlying water right; and
- 674 (b) any return flow requirement of the underlying water right is satisfied.
- 675 (6) (a) The state engineer shall approve a water reuse application if the state engineer  
676 concludes that the proposed water reuse is consistent with the underlying water right.
- 677 (b) The state engineer may:
- 678 (i) deny an application for water reuse if the proposed water reuse is inconsistent with

679 the underlying water right; or

680 (ii) approve the application in part or with conditions to assure consistency with the  
681 underlying water right.

682 (7) A public agency with an approved reuse application shall submit a report, as  
683 directed by the state engineer, concerning the ongoing water reuse operation.

684 (8) The [~~state engineer~~] Water Rights Board may make rules in accordance with Title  
685 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement the provisions of this  
686 chapter.

687 Section 22. Section **73-5-13** is amended to read:

688 **73-5-13. Claim to surface or underground water not otherwise represented --**  
689 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**  
690 **action to determine validity -- Rules.**

691 (1) (a) All claimants to the right to the use of water, including both surface and  
692 underground, whose rights are not represented by certificates of appropriation issued by the  
693 state engineer, by applications filed with the state engineer, by court decrees, or by notice of  
694 claim filed pursuant to law, shall submit the claim to the state engineer.

695 (b) Subsections (2) through (7) shall only apply to claims submitted to the state  
696 engineer pursuant to this section after May 4, 1997.

697 (2) (a) Each claim submitted under this section shall be verified under oath by the  
698 claimant or the claimant's duly appointed representative and submitted on forms furnished by  
699 the state engineer setting forth any information the state engineer requires, including:

700 (i) the name and post office address of the person making the claim;

701 (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both,  
702 where appropriate;

703 (iii) the source of supply;

704 (iv) the priority date of the right;

705 (v) the location of the point of diversion with reference to a United States land survey  
706 corner;

707 (vi) the place of use;

708 (vii) the nature and extent of use;

709 (viii) the time during which the water has been used each year; and

- 710 (ix) the date when the water was first used.
- 711 (b) The claim shall also include the following information verified under oath by a  
712 registered engineer or land surveyor:
- 713 (i) measurements of the amount of water diverted;
- 714 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per  
715 second is consistent with the beneficial use claimed and the supply which the source is capable  
716 of producing; and
- 717 (iii) a map showing the original diversion and conveyance works and where the water  
718 was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial  
719 use.
- 720 (c) The state engineer may require additional information as necessary to evaluate any  
721 claim including:
- 722 (i) affidavits setting forth facts of which the affiant has personal knowledge;
- 723 (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
- 724 (iii) authenticated copies of original diaries, personal histories, or other historical  
725 documents which document the claimed use of water; and
- 726 (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's  
727 office.
- 728 (3) (a) A claim may be corrected by submitting to the state engineer a verified  
729 corrected claim designated as such and bearing the same number as the original claim.
- 730 (b) No fee shall be charged for submitting a corrected claim.
- 731 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under  
732 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay  
733 the expenses of conducting a field investigation and publishing a notice of the claim, the state  
734 engineer shall:
- 735 (i) file the claim;
- 736 (ii) endorse the date of its receipt;
- 737 (iii) assign the claim a water right number; and
- 738 (iv) publish a notice of the claim following the same procedures as provided in Section  
739 73-3-6.
- 740 (b) Any claim not acceptably complete under Subsection (2) shall be returned to the

741 claimant.

742 (c) The acceptance of any claim filed under this section by the state engineer may not  
743 be considered to be an adjudication by the state engineer of the validity of the claimed water  
744 right.

745 (5) (a) The state engineer shall:

746 (i) conduct a field investigation of each claim filed; and

747 (ii) prepare a report of the investigation.

748 (b) The report of the investigation shall:

749 (i) become part of the file on the claim; and

750 (ii) be admissible in any administrative or judicial proceeding on the validity of the  
751 claim.

752 (6) (a) Any person who may be damaged by a diversion and use of water as described  
753 in a claim submitted pursuant to this section may file an action in district court to determine the  
754 validity of the claim, whether or not the claim has been accepted for filing by the state  
755 engineer.

756 (b) Venue for the action shall be in the county in which the point of diversion listed in  
757 the claim is located, or in a county where the place of use, or some part of it, is located.

758 (c) The action shall be brought against the claimant to the use of water or the claimant's  
759 successor in interest.

760 (d) In any action brought to determine the validity of a claim to the use of water under  
761 this section, the claimant shall have the initial burden of proof as to the validity of the claimed  
762 right.

763 (e) Any person filing an action challenging the validity of a claim to the use of water  
764 under this section shall notify the state engineer of the pendency of the action in a manner  
765 prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no  
766 action on any change or exchange applications founded on the claim that is the subject of the  
767 pending litigation, until the court adjudicates the matter.

768 (f) Upon the entering of any final order or decree in any judicial action to determine the  
769 validity of a claim under this section, the prevailing party shall file a certified copy of the order  
770 or decree with the state engineer, which shall become part of the state engineer's file on the  
771 claim.

772 (7) The ~~[state engineer]~~ Water Rights Board may make rules consistent with this  
773 section specifying information required to be included in a claim and claim procedures.

774 Section 23. Section **73-5-15** is amended to read:

775 **73-5-15. Groundwater management plan.**

776 (1) As used in this section:

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

779 (b) "Safe yield" means the amount of groundwater that can be withdrawn from a  
780 groundwater basin over a period of time without exceeding the long-term recharge of the basin  
781 or unreasonably affecting the basin's physical and chemical integrity.

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

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

- 787 (i) limit groundwater withdrawals to safe yield;
- 788 (ii) protect the physical integrity of the aquifer; and
- 789 (iii) protect water quality.

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

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

- 794 (i) the hydrology of the groundwater basin;
- 795 (ii) the physical characteristics of the groundwater basin;
- 796 (iii) the relationship between surface water and groundwater, including whether the  
797 groundwater should be managed in conjunction with hydrologically connected surface waters;
- 798 (iv) the geographic spacing and location of groundwater withdrawals;
- 799 (v) water quality;
- 800 (vi) local well interference; and
- 801 (vii) other relevant factors.

802 (b) The state engineer shall base the provisions of a groundwater management plan on

803 the principles of prior appropriation.

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

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

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

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

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

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

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

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

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

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

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

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

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

836 (i) that the state engineer proposes to adopt a groundwater management plan;

837 (ii) describing generally the land area proposed to be included in the groundwater  
838 management plan; and

839 (iii) stating the location, date, and time of each public meeting to be held in accordance  
840 with Subsection (5)(b);

841 (b) hold one or more public meetings in the geographic area proposed to be included  
842 within the groundwater management plan to:

843 (i) address the need for a groundwater management plan;

844 (ii) present any data, studies, or reports that the state engineer intends to consider in  
845 preparing the groundwater management plan;

846 (iii) address safe yield and any other subject that may be included in the groundwater  
847 management plan;

848 (iv) outline the estimated administrative costs, if any, that groundwater users are likely  
849 to incur if the plan is adopted; and

850 (v) receive any public comments and other information presented at the public  
851 meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);

852 (c) receive and consider written comments concerning the proposed groundwater  
853 management plan from any person for a period determined by the state engineer of not less  
854 than 60 days after the day on which the notice required by Subsection (5)(a) is given;

855 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,  
856 publish notice:

857 (A) that a draft of the groundwater management plan has been proposed; and

858 (B) specifying where a copy of the draft plan may be reviewed; and

859 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of  
860 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

861 (e) provide notice of the adoption of the groundwater management plan.

862 (6) A groundwater management plan shall become effective on the date notice of  
863 adoption is completed under Subsection (7), or on a later date if specified in the plan.

864 (7) (a) A notice required by this section shall be:

865 (i) published once a week for two successive weeks in a newspaper of general  
866 circulation in each county that encompasses a portion of the land area proposed to be included  
867 within the groundwater management plan;

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

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

871 (A) county;

872 (B) incorporated city or town;

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

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

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

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

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

880 (H) special service district providing water, sewer, drainage, or flood control services,  
881 under Title 17A, Chapter 2, Part 13, Utah Special Service District Act;

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

884 (J) conservation district, under Title 17A, Chapter 3, Part 8, Conservation Districts.

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

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

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

892 (10) (a) A person aggrieved by a groundwater management plan may challenge any  
893 aspect of the groundwater management plan by:

894 (i) requesting administrative review by the Water Rights Board in accordance with  
895 Section 73-2-31; or

896           (ii) filing a complaint within 60 days after the adoption of the groundwater  
897 management plan in the district court for any county in which the groundwater basin is found.

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

900           (c) An action brought under [~~this~~] Subsection (10)(a)(ii) is reviewed de novo by the  
901 district court.

902           (d) A person challenging a groundwater management plan under [~~this~~] Subsection  
903 (10)(a)(ii) shall join the state engineer as a defendant in the action challenging the groundwater  
904 management plan.

905           (e) (i) Within 30 days after the day on which a person files an action challenging any  
906 aspect of a groundwater management plan under Subsection (10)(a), the person filing the action  
907 shall publish notice of the action in a newspaper of general circulation in the county in which  
908 the district court is located.

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

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

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

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

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

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

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

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

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

925           (11) A groundwater management plan adopted or amended in accordance with this  
926 section is exempt from the requirements in Title 63, Chapter 46a, Utah Administrative

927 Rulemaking Act.

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

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

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

936 (15) (a) A groundwater management plan adopted by the state engineer before May 1,  
937 2006, remains in force and has the same legal effect as it had on the day on which it was  
938 adopted by the state engineer.

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

941 Section 24. Section **73-5a-101** is amended to read:

942 **73-5a-101. Power of state engineer to regulate dams -- Water Rights Board rules.**

943 (1) The state engineer has the authority to regulate dams for the purpose of protecting  
944 public safety.

945 (2) To protect life and property, the [~~state engineer~~] Water Rights Board may make  
946 rules controlling the construction and operation of dams, including rules controlling:

947 (a) design;

948 (b) maintenance;

949 (c) repair;

950 (d) removal; and

951 (e) abandonment.

952 (3) The [~~state engineer~~] Water Rights Board may by rule exempt from this chapter any  
953 dam that:

954 (a) impounds less than 20 acre-feet of water and does not constitute a threat to human  
955 life if it fails; or

956 (b) does not constitute a threat to human life and would result in only minor damage to  
957 property of the owner if it fails.

958 Section 25. Section **73-5a-105** is amended to read:

959 **73-5a-105. Independent consultants -- Owner to pay costs.**

960 (1) The state engineer may require the owner of a dam or proposed dam to obtain the  
961 services of an independent consultant or team of consultants approved by the state engineer to  
962 consult regarding the adequacy of the design, construction, or operation of the dam if safety  
963 considerations pertaining to the design, construction, or operation of the dam warrant an  
964 independent review.

965 (2) The [~~state engineer~~] Water Rights Board shall make rules specifying:

966 (a) the safety considerations that will be considered in determining if an independent  
967 review is required;

968 (b) the requisite qualifications and experience of the independent consultants; and

969 (c) the timing of the consultants' review so that their recommendations are made in a  
970 timely manner.

971 (3) (a) The independent consultants shall be considered to be the agents of the owner of  
972 the dam.

973 (b) The costs of the independent consultants' services shall be paid by the owner of the  
974 dam.

975 (c) The owner of the dam may require the independent consultants to consider other  
976 issues, in addition to safety considerations, such as:

977 (i) design selections or alternatives;

978 (ii) site selection;

979 (iii) cost effectiveness; or

980 (iv) other tasks as defined by the contract.

981 Section 26. Section **73-5a-203** is amended to read:

982 **73-5a-203. Review of plans.**

983 (1) The state engineer shall establish a formal written procedure for the review of plans  
984 submitted pursuant to Section 73-5a-202. Plans shall be reviewed according to:

985 (a) design criteria which the [~~state engineer~~] Water Rights Board shall specify in rules;  
986 and

987 (b) data or criteria generally accepted by the general dam design community.

988 (2) Upon review of the plans, the state engineer will:

- 989 (a) approve them with appropriate conditions;
- 990 (b) reject them; or
- 991 (c) return them for correction.
- 992 (3) The state engineer shall document each review indicating:
- 993 (a) how the plans were reviewed; and
- 994 (b) his evaluation of the plans.

995 Section 27. Section **73-5a-304** is amended to read:

996 **73-5a-304. Final inspection.**

997 (1) Following construction and prior to impounding any water, the state engineer shall  
998 undertake a final inspection of the project.

999 (2) A written final approval of the project shall be issued if:

1000 (a) the state engineer determines that:

1001 (i) the project was constructed in accordance with plans approved by the state engineer  
1002 under Sections 73-5a-203 and 73-5a-303; and

1003 (ii) during construction, inspections and tests were conducted as required by Section  
1004 73-5a-301; and

1005 (b) the emergency action plan and standard operating plan meet the requirements set  
1006 forth in rules adopted by the [~~state engineer~~] Water Rights Board.

1007 (3) (a) The state engineer may require the owner to:

1008 (i) submit a formal operating plan for the initial filling of the reservoir; or

1009 (ii) follow certain procedures during the initial filling of the reservoir.

1010 (b) Failure to submit the operating plan or follow the specified procedures shall result  
1011 in revocation of the final approval.

1012 Section 28. Section **73-5a-401** is amended to read:

1013 **73-5a-401. Records and reports.**

1014 The [~~state engineer~~] Water Rights Board may make rules requiring the owner of any  
1015 dam to:

1016 (1) maintain records pertaining to the construction, operation, or maintenance of the  
1017 dam; or

1018 (2) submit:

1019 (a) reports to the state engineer regarding maintenance, operation, or instrumentation

1020 readings; or

1021 (b) any other data considered necessary by the state engineer.

1022 Section 29. Section **73-5a-403** is amended to read:

1023 **73-5a-403. Contents of standard operating plans.**

1024 [~~By May 1, 1991, the state engineer~~] The Water Rights Board shall adopt rules  
1025 specifying the contents of standard operating plans.

1026 Section 30. Section **73-5a-502** is amended to read:

1027 **73-5a-502. Legislative findings -- Immunity from suit -- Minimum standards for**  
1028 **existing high hazard dams -- Exceptions -- Investigations and plans for compliance with**  
1029 **minimum standards.**

1030 (1) The Legislature finds that:

1031 (a) it is in the interest of the people of the state to improve the safety of existing dams;

1032 (b) mutual irrigation companies and water users associations cannot afford to bring  
1033 dams into conformance with the state's current minimum safety standards without financial  
1034 assistance from the state;

1035 (c) due to limited financial, physical, and human resources, it is necessary to establish  
1036 priorities for the upgrade of dams; and

1037 (d) the state and its officers and employees are immune from suit for any injury or  
1038 damage resulting from the exercise or performance or the failure to exercise or perform any  
1039 function pursuant to this chapter.

1040 (2) The [~~state engineer~~] Water Rights Board shall establish minimum standards for  
1041 existing high hazard dams by rule. The standards for existing high hazard dams may differ  
1042 from the design criteria established for new construction.

1043 (3) No seismic standards shall be established for existing high hazard dams within the  
1044 flood control use classification.

1045 (4) (a) In implementing this section, the state engineer will develop a priority list of  
1046 high hazard dams. The list will be determined by calculating the relative anticipated breach  
1047 flows in the event of a dam failure. The dams will be ranked from the largest breach flow to  
1048 the smallest for all high hazard dams.

1049 (b) The state engineer shall investigate annually 25 dams on the priority list in order of  
1050 their ranking to determine in what areas they are deficient or do not meet minimum standards.

1051 (c) Once a determination is made, the owner will be notified that the owner will be  
1052 required to undertake investigations to determine requirements necessary to bring the dam into  
1053 compliance with minimum standards.

1054 (d) Once the owner has been informed of the deficiencies of the dam, the owner will be  
1055 given 90 days to respond, in writing, as to what steps the owner is taking to investigate the  
1056 deficiencies and the time required to complete the investigations.

1057 (e) The state engineer will review the proposal, and if it appears reasonable, will  
1058 approve it.

1059 (5) The state engineer may not require any mutual irrigation company or water users  
1060 association to upgrade a dam in conformance with minimum standards, unless a grant to pay  
1061 for 80% of the costs is made available from the Board of Water Resources.

1062 Section 31. Section **73-5a-602** is amended to read:

1063 **73-5a-602. Contents of emergency action plans.**

1064 [~~By May 1, 1991, the state engineer~~] The Water Rights Board shall adopt rules  
1065 specifying the contents of an emergency action plan.

1066 Section 32. Section **73-6-1** is amended to read:

1067 **73-6-1. Suspension of right to appropriate -- By proclamation of governor.**

1068 For the purpose of preserving the surplus and unappropriated waters of any stream or  
1069 other source of water supply for use by irrigation districts and organized agricultural water  
1070 users, or for any use whatsoever, when in the judgment of the governor and the [~~state engineer~~]  
1071 Water Rights Board the welfare of the state demands it, the governor by proclamation may,  
1072 upon the recommendation of the [~~state engineer~~] Water Rights Board, suspend the right of the  
1073 public to appropriate such surplus or unappropriated waters.

1074 Section 33. Section **73-6-2** is amended to read:

1075 **73-6-2. Restoration by proclamation -- Priority of applications.**

1076 Waters withdrawn from appropriation under this chapter may be restored by  
1077 proclamation of the governor upon the recommendation of the [~~state engineer~~] Water Rights  
1078 Board. Such proclamation shall not become effective until notice thereof has been published at  
1079 least once a week for three successive weeks in a newspaper of general circulation within the  
1080 boundaries of the river system or water source within which the waters so to be restored are  
1081 situated. Applications for appropriations shall not be filed during the time such waters are

1082 withdrawn from appropriation; provided, that after the first publication of notice aforesaid  
1083 applications may be deposited with the state engineer and at the time such proclamation  
1084 becomes effective the engineer shall hold public hearings, giving all applicants notice, to  
1085 determine which applications so filed during the period of publication of such notice are most  
1086 conducive to the public good, and shall file such applications in order of priority according to  
1087 such determination.

1088 Section 34. Section **73-22-5** is amended to read:

1089 **73-22-5. Jurisdiction of division -- Hearings -- Subpoena power -- Restraining**  
1090 **violations -- Actions for damages against violators unaffected.**

1091 (1) (a) The division has jurisdiction and authority over all persons and property, public  
1092 and private, necessary to enforce the provisions of this chapter [~~and may enact, issue, and~~  
1093 ~~enforce~~].

1094 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1095 Water Rights Board shall make rules necessary [~~rules and orders~~] to carry out the requirements  
1096 of this chapter.

1097 (2) (a) Any affected person may apply for a hearing before the division, or the division  
1098 may initiate proceedings upon any question relating to the administration of this chapter by  
1099 following the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures  
1100 Act.

1101 (b) The Division of Water Rights shall comply with the procedures and requirements  
1102 of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.

1103 (3) The division shall have the power to summon witnesses, to administer oaths, and to  
1104 require the production of records, books, and documents for examination at any hearing or  
1105 investigation conducted by it.

1106 (4) (a) If any person fails or refuses to comply with a subpoena issued by the division,  
1107 or if any witness fails or refuses to testify about any matter regarding which he may be  
1108 interrogated, the division may petition any district court in the state to issue an order  
1109 compelling the person to:

1110 (i) comply with the subpoena and attend before the division;

1111 (ii) produce any records, books, and documents covered by the subpoena; or

1112 (iii) to give testimony.

1113 (b) The court may punish failure to comply with the order as contempt.

1114 (5) (a) Whenever it appears that any person is violating or threatening to violate any  
1115 provision of this chapter, or any rule or order made under this chapter, the division may file suit  
1116 in the name of the state to restrain that person from continuing the violation or from carrying  
1117 out the threat of violation.

1118 (b) Venue for the action is in the district court in the county where any defendant  
1119 resides or in the county where the violation is alleged to have occurred.

1120 (6) (a) Nothing in this chapter, no suit by or against the division, and no violation  
1121 charged or asserted against any person under this chapter, or any rule or order issued under it,  
1122 shall impair, abridge, or delay any cause of action for damages that any person may have or  
1123 assert against any person violating this chapter, or any rule or order issued under it.

1124 (b) Any person so damaged by the violation may sue for and recover whatever damages  
1125 that he is otherwise entitled to receive.

1126 Section 35. Section **73-22-6** is amended to read:

1127 **73-22-6. Information required concerning resource development --**  
1128 **Confidentiality -- Regulation of wells -- Surety bonds -- Inspection.**

1129 (1) The division shall have authority to require:

1130 (a) Identification of the location and ownership of all wells and producing geothermal  
1131 leases.

1132 (b) Filing with the division of a notice of intent to drill, redrill, deepen, permanently  
1133 alter the casing of, or abandon any well. Approval of the notice of intent must be obtained from  
1134 the division prior to commencement of operations.

1135 (c) Keeping of well logs and filing true and correct copies with the division. These  
1136 records are public records when filed with the division, unless the owner or operator requests,  
1137 in writing, that the records be held confidential. The period of confidentiality shall be  
1138 established by the division, not to exceed five years from the date of production or injection for  
1139 other than testing purposes or five years from the date of abandonment, whichever occurs first,  
1140 as determined by the division. Well records held confidential by the division are open to  
1141 inspection by those persons authorized in writing by the owner or operator. Confidential status  
1142 shall not restrict inspection by state officers charged with regulating well operations or by  
1143 authorized officials of the Utah State Tax Commission for purposes of tax assessment.

1144 (d) The spacing, drilling, casing, testing, operating, producing, and abandonment of  
1145 wells so as to prevent:

1146 (i) geothermal resources, water, gases, or other fluids from escaping into strata other  
1147 than the strata in which they are found (unless in accordance with a subsurface injection  
1148 program approved by the division);

1149 (ii) pollution of surface and groundwater;

1150 (iii) premature cooling of any geothermal system by water encroachment or otherwise  
1151 which tends to reduce the ultimate economic recovery of the geothermal resources;

1152 (iv) blowouts, cave-ins, and seepage; and

1153 (v) unreasonable disturbance or injury to neighboring properties, prior water rights,  
1154 human life, health, and the environment.

1155 (e) The operator to file cash or individual surety bonds with the division for each new  
1156 well drilled and each abandoned well redrilled. The amount of surety required shall be  
1157 determined by the ~~[division]~~ Water Rights Board. In lieu of bonds for separate wells, the  
1158 operator may file a blanket cash or individual surety bond in an amount set by the division to  
1159 cover all the operator's drilling, redrilling, deepening, maintenance, or abandonment activities  
1160 for wells in the state. Bonds filed with the division shall be executed by the operator, as  
1161 principal, conditioned on compliance with division regulations in drilling, redrilling,  
1162 deepening, maintaining, or abandoning any well or wells covered by the bond and shall secure  
1163 the state against all losses, charges, and expenses incurred by it to obtain such compliance by  
1164 the principal named in the bond.

1165 (f) The geothermal owner or operator to measure geothermal production according to  
1166 standards set by the division and maintain complete and accurate production records. The  
1167 records, or certified copies of them, shall be preserved on file by the owner or operator for a  
1168 period of five years and shall be available for examination by the division at all reasonable  
1169 times.

1170 (g) Filing with the division any other reasonable reports which it prescribes regarding  
1171 geothermal operations within the state.

1172 (2) Any bond filed with the division in conformance with this chapter may, with the  
1173 consent of the division, be terminated and canceled and the surety be relieved of all obligations  
1174 under it when the well or wells covered by the bond have been properly abandoned or another

1175 valid bond has been substituted for it.

1176 (3) The division may enter onto private or public land at any time to inspect any well or  
1177 geothermal resource development project to determine if the well or project is being  
1178 constructed, operated, or maintained according to any applicable permits or to determine if the  
1179 construction, operation, or maintenance of the well or project may involve an unreasonable risk  
1180 to life, health, property, the environment or subsurface, surface, or atmospheric resources.

1181 Section 36. Section **73-22-10** is amended to read:

1182 **73-22-10. Judicial and administrative review of division actions -- Falsification or**  
1183 **omission of filings as misdemeanor -- Limitation of actions.**

1184 (1) (a) Any person aggrieved by any order issued under this chapter may obtain:

1185 (i) administrative review by the Water Rights Board in accordance with Section  
1186 73-2-31; or

1187 (ii) judicial review.

1188 (b) Venue for judicial review of informal adjudicative proceedings is in the district  
1189 court of Salt Lake County, or in the district court of the county in which the complaining  
1190 person resides.

1191 (2) An action or appeal involving any provision of this chapter, or a rule or order  
1192 issued under it shall be determined as expeditiously as possible.

1193 (3) Any person who, for the purpose of evading this chapter or any order of the  
1194 division issued under it, makes or causes to be made any false entry in any report, record,  
1195 account, or memorandum required by this chapter, or by any order issued under it, or omits or  
1196 causes to be omitted from the report, record, account, or memorandum, full, true, and correct  
1197 entries as required by this chapter, or by an order, or removes from this state or destroys,  
1198 mutilates, alters, or falsifies the record, account, or memorandum, is guilty of a class A  
1199 misdemeanor.

1200 (4) No suit, action, or other proceeding based upon a violation of this chapter or any  
1201 order of the division issued under it may be begun or maintained unless the action is begun  
1202 within two years from the date of the alleged violation.

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**Legislative Review Note**  
as of 1-23-08 11:32 AM

**Office of Legislative Research and General Counsel**

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**S.B. 85 - Water Rights Board**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require additional appropriation of \$77,900 from the General Fund to the Division of Water Rights.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$77,900	\$77,900	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$77,900</b>	<b>\$77,900</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.