

Senator Dennis E. Stowell proposes the following substitute bill:

WATER RIGHTS BOARD

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: James R. Gowans

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;
- appoint an administrative law judge to conduct an administrative review a final order of the state engineer;
- 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;

▶ authorizes an administrative law judge to review a final order of the state engineer;



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

37 **Monies Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

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

- 57 **73-3b-201**, as last amended by Laws of Utah 1995, Chapter 28
- 58 **73-3b-204**, as last amended by Laws of Utah 1995, Chapter 28
- 59 **73-3b-302**, as last amended by Laws of Utah 1995, Chapter 28
- 60 **73-3c-302**, as enacted by Laws of Utah 2006, Chapter 179
- 61 **73-5-13**, as last amended by Laws of Utah 2001, Chapter 136
- 62 **73-5-15**, as last amended by Laws of Utah 2007, Chapters 179 and 329
- 63 **73-5a-101**, as enacted by Laws of Utah 1990, Chapter 319
- 64 **73-5a-105**, as enacted by Laws of Utah 1990, Chapter 319
- 65 **73-5a-203**, as enacted by Laws of Utah 1990, Chapter 319
- 66 **73-5a-304**, as enacted by Laws of Utah 1990, Chapter 319
- 67 **73-5a-401**, as enacted by Laws of Utah 1990, Chapter 319
- 68 **73-5a-403**, as enacted by Laws of Utah 1990, Chapter 319
- 69 **73-5a-502**, as last amended by Laws of Utah 1996, Chapter 264
- 70 **73-5a-602**, as enacted by Laws of Utah 1990, Chapter 319
- 71 **73-6-1**, Utah Code Annotated 1953
- 72 **73-6-2**, Utah Code Annotated 1953
- 73 **73-22-5**, as last amended by Laws of Utah 1987, Chapter 161
- 74 **73-22-6**, as enacted by Laws of Utah 1981, Chapter 188
- 75 **73-22-10**, as last amended by Laws of Utah 1987, Chapter 161

76 ENACTS:

- 77 **73-2-29**, Utah Code Annotated 1953
- 78 **73-2-30**, Utah Code Annotated 1953
- 79 **73-2-31**, Utah Code Annotated 1953



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

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

83 **73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording**
84 **of deed -- Report of water right conveyance.**

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

88 manner as is real estate.

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

91 (c) A recorded deed of a water right shall from the time of its recording in the office of
92 the county recorder constitute notice of its contents to all persons.

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

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

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

100 (c) The report shall be prepared by:

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

103 (A) an attorney;

104 (B) a professional engineer;

105 (C) a title insurance producer; or

106 (D) a professional land surveyor; or

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

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

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

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

114 (ii) the procedures for processing the reports.

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

116 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

117 (1) There shall be a state engineer.

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

119 ~~[(a)]~~ (i) be appointed by the governor with the consent of the Senate;
 120 ~~[(b)]~~ (ii) hold office for the term of four years and until a successor is appointed; and
 121 ~~[(c)]~~ (iii) have five years experience as a practical engineer or the theoretical
 122 knowledge, practical experience, and skill necessary for the position.

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

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

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

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

- 133 ~~[(a) reports of water right conveyances;]~~
- 134 ~~[(b) the construction of water wells and the licensing of water well drillers;]~~
- 135 ~~[(c) dam construction and safety;]~~
- 136 ~~[(d) the alteration of natural streams;]~~
- 137 ~~[(e) sewage effluent reuse;]~~
- 138 ~~[(f) geothermal resource conservation; and]~~
- 139 ~~[(g) enforcement orders and the imposition of fines and penalties.]~~

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

- 143 ~~[(a) water distribution systems and water commissioners;]~~
- 144 ~~[(b) water measurement and reporting;]~~
- 145 ~~[(c) ground-water recharge and recovery;]~~
- 146 ~~[(d) the determination of water rights; and]~~
- 147 ~~[(e) the form and content of applications and related documents, maps, and reports.]~~

148 ~~[(6)]~~ (4) The state engineer may bring suit in courts of competent jurisdiction to:
 149 (a) enjoin the unlawful appropriation, diversion, and use of surface and underground

150 water without first seeking redress through the administrative process;

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

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

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

154 [(7)] (5) The state engineer may:

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

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

165 [(8)] (6) (a) The state engineer may establish water distribution systems and define
166 their boundaries.

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

168 (i) secures the best protection to the water claimants; and

169 (ii) is the most economical for the state to supervise.

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

171 **73-2-1.5. Procedures -- Adjudicative proceedings.**

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

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

176 **73-2-10. Knowledge of waterways and irrigation -- Suggestions as to amendment**
177 **or enactment of laws.**

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

180 (2) The Water Rights Board shall suggest an amendment to existing laws or the

181 enactment of new laws [~~as his information and experience shall suggest~~].

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

183 **73-2-14. Fees -- Deposited as a dedicated credit.**

184 (1) The [~~state engineer~~] Water Rights Board shall charge fees pursuant to Section
185 63-38-3.2 for the following:

186 (a) applications to appropriate water;

187 (b) applications to temporarily appropriate water;

188 (c) applications for permanent or temporary change;

189 (d) applications for exchange;

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

191 (f) applications to appropriate water, or make a permanent or temporary change, for use
192 outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;

193 (g) groundwater recovery permits;

194 (h) diligence claims for surface or underground water filed pursuant to Section
195 73-5-13;

196 (i) republication of notice to water users after amendment of application where
197 required by this title;

198 (j) applications to segregate;

199 (k) requests for an extension of time in which to submit proof of appropriation not to
200 exceed 14 years after the date of approval of the application;

201 (l) requests for an extension of time in which to submit proof of appropriation 14 years
202 or more after the date of approval of the application;

203 (m) groundwater recharge permits;

204 (n) applications for a well driller's license, annual renewal of a well driller's license,
205 and late annual renewal of a well driller's license;

206 (o) certification of copies;

207 (p) preparing copies of documents; and

208 (q) reports of water right conveyance.

209 (2) (a) Fees for the services specified in Subsections (1)(a) through (i) shall be based
210 upon the rate of flow or volume of water.

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

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

213 (3) Fees collected under this section:

214 (a) shall be deposited in the General Fund as a dedicated credit to be used by the
215 Division of Water Rights; and

216 (b) may only be used by the Division of Water Rights to:

217 (i) meet the publication of notice requirements under this title; and

218 (ii) process reports of water right conveyance.

219 Section 6. Section **73-2-25** is amended to read:

220 **73-2-25. State engineer enforcement powers.**

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

223 (a) a notice of violation; or

224 (b) a cease and desist order.

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

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

229 (ii) is diverting, impounding, or using water in violation of an existing water right;

230 (iii) violates Section 73-5-4;

231 (iv) violates Section 73-5-9;

232 (v) violates a written distribution order from the state engineer;

233 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
234 or bank of a natural stream channel; or

235 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
236 Safety.

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

239 (i) a description of the violation;

240 (ii) notice of any penalties to which a person may be subject under Section 73-2-26;

241 and

242 (iii) notice that the state engineer may treat each day's violation of the provisions listed

243 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

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

246 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
247 ~~[state engineer]~~ the Water Rights Board shall make rules necessary to enforce an initial order,
248 which shall include:

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

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

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

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

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

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

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

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

264 (b) certified mail.

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

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

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

268 ~~[(†)]~~ (A) Salt Lake County; or

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

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

273 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a

274 final order issued under this section.

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

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

278 **73-2-26. Administrative penalties.**

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

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

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

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

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

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

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

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

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

291 (ii) any private right of action.

292 (d) (i) Each day of a continuing violation of the provisions described in Subsection
293 73-2-25(2)(a) or an initial or final order issued under Section 73-2-25 is a separate violation.

294 (ii) A penalty may not be imposed for a violation of the provisions listed in Subsection
295 73-2-25(2)(a) or an initial or a final order issued under Section 73-2-25 for a violation
296 occurring more than 12 months before the day on which a notice of violation is issued.

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

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

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

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

- 305 (b) the gravity of the violation, including the economic injury or impact to others;
- 306 (c) whether the person subject to fine or replacement attempted to comply with the
- 307 state engineer's orders; and
- 308 (d) the violator's economic benefit from the violation.
- 309 (3) (a) The state engineer may require that the water unlawfully taken be replaced after:
- 310 (i) a person fails to request administrative or judicial review of a final order issued
- 311 under Section 73-2-25; or
- 312 (ii) the completion of administrative or judicial review, including any appeals.
- 313 (b) The state engineer's order shall require that replacement of water begin within one
- 314 year of the day on which:
- 315 (i) the time period for requesting administrative or judicial review of a final order
- 316 issued under Section 73-2-25 expires without a person requesting administrative or judicial
- 317 review of the final order; or
- 318 (ii) the completion of administrative or judicial review, including any appeals.
- 319 (4) Water replaced under Subsection (3) shall be taken from water that the person
- 320 subject to the order requiring replacement would be entitled to use during the replacement
- 321 period.
- 322 (5) (a) If the state engineer issues an order requiring replacement, a copy of the order
- 323 shall be placed in the Division of Water Rights' water rights records.
- 324 (b) The order requiring replacement shall constitute a lien upon the water right affected
- 325 if the state engineer files a notice of lien in the office of the county recorder in the county
- 326 where the place of use of the water right is located.
- 327 (c) A notice of lien under Subsection (5)(b) shall include a legal description of the
- 328 place of use of the water right.
- 329 (6) Any monies collected under this section shall be deposited into the General Fund.
- 330 Section 8. Section **73-2-29** is enacted to read:
- 331 **73-2-29. Water Rights Board created.**
- 332 (1) As used in this section, "board" means the Water Rights Board.
- 333 (2) There is created the Water Rights Board that is the policymaking board for the state
- 334 engineer and the Division of Water Rights.
- 335 (3) (a) The governor, with the consent of the Senate, shall appoint the following five

336 members to the board:
337 (i) one member who:
338 (A) represents an agricultural or livestock interest;
339 (B) owns a surface water right; and
340 (C) is nominated by an organization that promotes agriculture;
341 (ii) one member who:
342 (A) represents an agricultural or livestock interest;
343 (B) owns a groundwater right; and
344 (C) is nominated by an organization that promotes agriculture;
345 (iii) one member who:
346 (A) represents a municipality; and
347 (B) is nominated by an organization that promotes municipal interests;
348 (iv) one member who:
349 (A) represents a water conservancy district; and
350 (B) is nominated by an organization that represents water conservancy districts; and
351 (v) one member who:
352 (A) represents a fish, wildlife, or recreational interest; and
353 (B) is nominated by an organization that promotes the instream flow of water.
354 (b) (i) At least one member appointed under Subsection (3)(a) shall be:
355 (A) licensed to practice law in the state; and
356 (b) knowledgeable about water law.
357 (ii) No member appointed under Subsection (3)(a) may reside in the same county as
358 another member.
359 (c) (i) A nominating organization shall nominate at least three people.
360 (ii) If the governor rejects all nominations submitted for a member, the nominating
361 organization shall submit additional names.
362 (d) If no organization submits a nomination, the governor shall appoint a member that
363 represents the interest listed in Subsection (3)(a).
364 (4) (a) Except as provided by Subsection (4)(b), a member shall serve a four year term.
365 (b) The governor shall, at the time of appointment or reappointment, adjust the length
366 of terms to ensure that the terms of no more than half of the members expire in a fiscal year.

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

369 (5) (a) A board member may not receive compensation or benefits for the member's
370 services, but may receive per diem and expenses incurred in the performance of the member's
371 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and
372 63A-3-107.

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

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

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

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

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

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

383 (a) the chair; or

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

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

386 (a) legal advice; and

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

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

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

392 **73-2-30. Water Rights Board -- Powers -- Duties.**

393 (1) The Water Rights Board shall:

394 (a) set policy consistent with this title for the state engineer and the Division of Water
395 Rights by making rules in accordance with Title 63, Chapter 46a, Utah Administrative
396 Rulemaking Act, and as provided in this title;

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

398 (c) appoint an administrative law judge to review an order by the state engineer as
399 provided by Section 73-2-31;

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

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

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

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

406 **73-2-31. Administrative Review by the Water Rights Board.**

407 (1) A person aggrieved by a final order of the state engineer regarding a water right of
408 50 acre-fee or less:

409 (a) may seek administrative review of the order by the administrative law judge
410 appointed by the Water Rights Board in accordance with Section 63-46b-12; and

411 (b) is not required to seek an administrative review before seeking judicial review of
412 the order in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

413 (2) (a) For purposes of Section 63-46b-12, the administrative law judge is a superior
414 agency that may review a final order of the state engineer.

415 (b) After review of a state engineer's final order in accordance with Title 63, Chapter
416 46b, Administrative Procedures Act, the administrative law judge may:

417 (i) take no action;

418 (ii) vacate or remand the order; or

419 (iii) amend the order.

420 (c) The administrative law judge shall sign a written final order on review as required
421 by Section 63-46b-12.

422 (3) A person aggrieved by a final order of the administrative law judge may seek
423 judicial review of the order in accordance with Title 63, Chapter 46b, Administrative
424 Procedures Act.

425 (4) An order by the state engineer is final 30 days after the day on which the order is
426 issued unless stayed, amended, or overturned by:

427 (a) the administrative law judge under Section 63-46b-12;

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

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

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

431 **73-3-5.6. Applications to appropriate or permanently change a small amount of**
432 **water.**

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

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

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

439 (c) the application complies with [~~the state engineer's~~]:

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

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

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

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

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

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

451 **73-3-14. Judicial and administrative review.**

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

453 (i) administrative review by the Water Rights Board in accordance with Section
454 73-2-31; or

455 (ii) judicial review by following the procedures and requirements of Title 63, Chapter
456 46b, Administrative Procedures Act.

457 (b) Venue for judicial review of informal adjudicative proceedings shall be in the
458 county in which the stream or water source, or some part of it, is located.

459 (2) The state engineer shall be joined as a defendant in all suits to review [~~his~~] the state

460 engineer's decisions, but no judgment for costs or expenses of the litigation may be rendered
461 against [~~him~~] the state engineer.

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

463 **73-3-16. Proof of appropriation or permanent change -- Notice -- Manner of**
464 **proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing --**
465 **Statement in lieu of proof of appropriation or change.**

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

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

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

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

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

- 487 (i) a statement indicating construction of the project works has been completed;
- 488 (ii) a description of the major features with appropriate maps, profiles, drawings, and
489 reservoir area-capacity curves;
- 490 (iii) a description of the point or points of diversion and rediversion;

491 (iv) project operation data;

492 (v) a map showing the place of use of water and a statement of the purpose and method
493 of use;

494 (vi) the project plan for beneficial use of water under the applications and the quantity
495 of water required; and

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

497 (b) The director of the Division of Water Resources shall sign proofs for the state
498 projects and an authorized official of the Bureau of Reclamation shall sign proofs for the
499 federal projects specified in Subsection (4)(a).

500 (5) The proof on all applications shall be sworn to by the applicant or the applicant's
501 appointed representative and proof engineer.

502 (6) (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall
503 submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed
504 professional engineer that show:

505 (i) the location of the completed works;

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

507 (iii) the natural stream or source from which and the point where the water is diverted
508 and, in the case of a nonconsumptive use, the point where the water is returned; and

509 (iv) the place of use.

510 (b) The state engineer may waive the filing of maps, profiles, and drawings if in the
511 state engineer's opinion the written proof adequately describes the works and the nature and
512 extent of beneficial use.

513 (7) The completed proof shall conform to rules [~~and standards~~] established by the [~~state~~
514 ~~engineer~~] Water Rights Board.

515 (8) In those areas in which general determination proceedings are pending, or have
516 been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state engineer
517 may petition the district court for permission to:

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

519 (b) permit each owner of an application to file a verified statement to the effect that the
520 applicant has completed the appropriation or change and elects to file a statement of water
521 users claim in the proposed determination of water rights or any supplement to it in accordance

522 with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or
523 proof of change.

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

525 **73-3-23. Replacement of water.**

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

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

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

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

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

538 **73-3-25. Well driller's license -- Bond -- Revocation or suspension for**
539 **noncompliance.**

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

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

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

546 (ii) regulating well construction.

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

550 (2) (a) (i) A person who constructs a well in this state must first obtain a license as
551 provided in this section.

552 (ii) Before a well driller's license will be issued, the applicant must file a well driller

553 bond with the state engineer.

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

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

560 (b) (i) Well drillers shall comply with the rules ~~[enacted by the state engineer under~~
561 ~~this chapter]~~ authorized by this section.

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

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

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

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

571 **73-3a-104. Rulemaking power of Water Rights Board.**

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

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

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

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

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

579 **73-3b-201. Application for a recharge permit -- Required information -- Filing**
580 **fee.**

581 (1) The application for obtaining a groundwater recharge permit shall include the
582 following information:

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

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

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

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

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

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

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

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

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

597 (i) a description of the proposed project;

598 (ii) its design capacity;

599 (iii) a detailed monitoring program; and

600 (iv) the proposed duration of the project;

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

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

603 (ii) that the project is hydrologically feasible;

604 (iii) that the project will not:

605 (A) cause unreasonable harm to land; or

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

607 (iv) the percentage of anticipated recoverable water;

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

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

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

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

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

614 **73-3b-204. Application for a recovery permit -- Required information.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

637 **73-3b-302. Fee.**

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

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

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

643 **73-3c-302. Application to the state engineer.**

644 (1) A public agency proposing water reuse shall apply to the state engineer.

645 (2) An application for water reuse under Subsection (1) shall be made upon forms

646 furnished by the state engineer and shall include:

- 647 (a) the name of the applicant;
- 648 (b) a description of the underlying water right;
- 649 (c) an evaluation of the underlying water right's diversion, depletion, and return flow
- 650 requirements;
- 651 (d) the estimated quantity of water to be reused;
- 652 (e) the location of the POTW;
- 653 (f) the place, purpose, and extent of the proposed water reuse;
- 654 (g) an evaluation of depletion from the hydrologic system caused by the water reuse;

655 and

- 656 (h) any other information consistent with this chapter that is requested by the state
- 657 engineer.

658 (3) An application under Subsection (1) shall include a copy of a reuse authorization
659 contract for water reuse proposed by a public agency for any underlying water right not owned
660 by the public agency.

661 (4) In considering an application for water reuse, the state engineer shall comply with:

- 662 (a) Section 73-3-6;
- 663 (b) Section 73-3-7;
- 664 (c) Section 73-3-10; and
- 665 (d) Section 73-3-14.

666 (5) In determining whether a proposed water reuse is consistent with the underlying
667 water right, the state engineer shall conclude that a proposed water reuse is consistent with the
668 underlying water right if:

- 669 (a) the use of the reuse water does not enlarge the underlying water right; and
- 670 (b) any return flow requirement of the underlying water right is satisfied.

671 (6) (a) The state engineer shall approve a water reuse application if the state engineer
672 concludes that the proposed water reuse is consistent with the underlying water right.

673 (b) The state engineer may:

- 674 (i) deny an application for water reuse if the proposed water reuse is inconsistent with
- 675 the underlying water right; or

676 (ii) approve the application in part or with conditions to assure consistency with the

677 underlying water right.

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

680 (8) The ~~[state engineer]~~ Water Rights Board may make rules in accordance with Title
681 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement the provisions of this
682 chapter.

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

684 **73-5-13. Claim to surface or underground water not otherwise represented --**
685 **Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial**
686 **action to determine validity -- Rules.**

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

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

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

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

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

699 (iii) the source of supply;

700 (iv) the priority date of the right;

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

703 (vi) the place of use;

704 (vii) the nature and extent of use;

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

706 (ix) the date when the water was first used.

707 (b) The claim shall also include the following information verified under oath by a

708 registered engineer or land surveyor:

709 (i) measurements of the amount of water diverted;

710 (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per
711 second is consistent with the beneficial use claimed and the supply which the source is capable
712 of producing; and

713 (iii) a map showing the original diversion and conveyance works and where the water
714 was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial
715 use.

716 (c) The state engineer may require additional information as necessary to evaluate any
717 claim including:

718 (i) affidavits setting forth facts of which the affiant has personal knowledge;

719 (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;

720 (iii) authenticated copies of original diaries, personal histories, or other historical
721 documents which document the claimed use of water; and

722 (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's
723 office.

724 (3) (a) A claim may be corrected by submitting to the state engineer a verified
725 corrected claim designated as such and bearing the same number as the original claim.

726 (b) No fee shall be charged for submitting a corrected claim.

727 (4) (a) Upon submission by a claimant of a claim that is acceptably complete under
728 Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay
729 the expenses of conducting a field investigation and publishing a notice of the claim, the state
730 engineer shall:

731 (i) file the claim;

732 (ii) endorse the date of its receipt;

733 (iii) assign the claim a water right number; and

734 (iv) publish a notice of the claim following the same procedures as provided in Section
735 73-3-6.

736 (b) Any claim not acceptably complete under Subsection (2) shall be returned to the
737 claimant.

738 (c) The acceptance of any claim filed under this section by the state engineer may not

739 be considered to be an adjudication by the state engineer of the validity of the claimed water
740 right.

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

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

743 (ii) prepare a report of the investigation.

744 (b) The report of the investigation shall:

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

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

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

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

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

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

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

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

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

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

771 **73-5-15. Groundwater management plan.**

772 (1) As used in this section:

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

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

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

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

783 (i) limit groundwater withdrawals to safe yield;

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

785 (iii) protect water quality.

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

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

790 (i) the hydrology of the groundwater basin;

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

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

794 (iv) the geographic spacing and location of groundwater withdrawals;

795 (v) water quality;

796 (vi) local well interference; and

797 (vii) other relevant factors.

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

800 (c) (i) The state engineer shall use the best available scientific method to determine

801 safe yield.

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

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

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

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

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

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

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

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

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

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

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

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

- 832 (i) that the state engineer proposes to adopt a groundwater management plan;
- 833 (ii) describing generally the land area proposed to be included in the groundwater
834 management plan; and
- 835 (iii) stating the location, date, and time of each public meeting to be held in accordance
836 with Subsection (5)(b);
- 837 (b) hold one or more public meetings in the geographic area proposed to be included
838 within the groundwater management plan to:
- 839 (i) address the need for a groundwater management plan;
- 840 (ii) present any data, studies, or reports that the state engineer intends to consider in
841 preparing the groundwater management plan;
- 842 (iii) address safe yield and any other subject that may be included in the groundwater
843 management plan;
- 844 (iv) outline the estimated administrative costs, if any, that groundwater users are likely
845 to incur if the plan is adopted; and
- 846 (v) receive any public comments and other information presented at the public
847 meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);
- 848 (c) receive and consider written comments concerning the proposed groundwater
849 management plan from any person for a period determined by the state engineer of not less
850 than 60 days after the day on which the notice required by Subsection (5)(a) is given;
- 851 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,
852 publish notice:
- 853 (A) that a draft of the groundwater management plan has been proposed; and
- 854 (B) specifying where a copy of the draft plan may be reviewed; and
- 855 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of
856 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
- 857 (e) provide notice of the adoption of the groundwater management plan.
- 858 (6) A groundwater management plan shall become effective on the date notice of
859 adoption is completed under Subsection (7), or on a later date if specified in the plan.
- 860 (7) (a) A notice required by this section shall be:
- 861 (i) published once a week for two successive weeks in a newspaper of general
862 circulation in each county that encompasses a portion of the land area proposed to be included

863 within the groundwater management plan;

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

865 (iii) mailed to each of the following that has within its boundaries a portion of the land

866 area to be included within the proposed groundwater management plan:

867 (A) county;

868 (B) incorporated city or town;

869 (C) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District

870 Act;

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

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

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

874 (G) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan

875 Water District Act;

876 (H) special service district providing water, sewer, drainage, or flood control services,

877 under Title 17A, Chapter 2, Part 13, Utah Special Service District Act;

878 (I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water

879 Conservancy District Act; and

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

881 (b) A notice required by this section is effective upon substantial compliance with

882 Subsections (7)(a)(i) through (iii).

883 (8) A groundwater management plan may be amended in the same manner as a

884 groundwater management plan may be adopted under this section.

885 (9) The existence of a groundwater management plan does not preclude any otherwise

886 eligible person from filing any application or challenging any decision made by the state

887 engineer within the affected groundwater basin.

888 (10) (a) A person aggrieved by a groundwater management plan may challenge any

889 aspect of the groundwater management plan by:

890 (i) requesting administrative review by the Water Rights Board in accordance with

891 Section 73-2-31; or

892 (ii) filing a complaint within 60 days after the adoption of the groundwater

893 management plan in the district court for any county in which the groundwater basin is found.

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

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

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

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

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

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

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

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

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

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

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

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

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

921 (11) A groundwater management plan adopted or amended in accordance with this
922 section is exempt from the requirements in Title 63, Chapter 46a, Utah Administrative
923 Rulemaking Act.

924 (12) Recharge and recovery projects permitted under Chapter 3b, Groundwater

925 Recharge and Recovery Act, are exempted from this section.

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

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

932 (15) (a) A groundwater management plan adopted by the state engineer before May 1,
933 2006, remains in force and has the same legal effect as it had on the day on which it was
934 adopted by the state engineer.

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

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

938 **73-5a-101. Power of state engineer to regulate dams -- Water Rights Board rules.**

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

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

- 943 (a) design;
- 944 (b) maintenance;
- 945 (c) repair;
- 946 (d) removal; and
- 947 (e) abandonment.

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

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

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

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

955 **73-5a-105. Independent consultants -- Owner to pay costs.**

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

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

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

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

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

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

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

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

973 (i) design selections or alternatives;

974 (ii) site selection;

975 (iii) cost effectiveness; or

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

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

978 **73-5a-203. Review of plans.**

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

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

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

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

985 (a) approve them with appropriate conditions;

986 (b) reject them; or

987 (c) return them for correction.

988 (3) The state engineer shall document each review indicating:

989 (a) how the plans were reviewed; and

990 (b) his evaluation of the plans.

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

992 **73-5a-304. Final inspection.**

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

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

996 (a) the state engineer determines that:

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

999 (ii) during construction, inspections and tests were conducted as required by Section
1000 73-5a-301; and

1001 (b) the emergency action plan and standard operating plan meet the requirements set
1002 forth in rules adopted by the [~~state engineer~~] Water Rights Board.

1003 (3) (a) The state engineer may require the owner to:

1004 (i) submit a formal operating plan for the initial filling of the reservoir; or

1005 (ii) follow certain procedures during the initial filling of the reservoir.

1006 (b) Failure to submit the operating plan or follow the specified procedures shall result
1007 in revocation of the final approval.

1008 Section 28. Section **73-5a-401** is amended to read:

1009 **73-5a-401. Records and reports.**

1010 The [~~state engineer~~] Water Rights Board may make rules requiring the owner of any
1011 dam to:

1012 (1) maintain records pertaining to the construction, operation, or maintenance of the
1013 dam; or

1014 (2) submit:

1015 (a) reports to the state engineer regarding maintenance, operation, or instrumentation
1016 readings; or

1017 (b) any other data considered necessary by the state engineer.

1018 Section 29. Section **73-5a-403** is amended to read:

1019 **73-5a-403. Contents of standard operating plans.**

1020 [~~By May 1, 1991, the state engineer~~] The Water Rights Board shall adopt rules
1021 specifying the contents of standard operating plans.

1022 Section 30. Section **73-5a-502** is amended to read:

1023 **73-5a-502. Legislative findings -- Immunity from suit -- Minimum standards for**
1024 **existing high hazard dams -- Exceptions -- Investigations and plans for compliance with**
1025 **minimum standards.**

1026 (1) The Legislature finds that:

1027 (a) it is in the interest of the people of the state to improve the safety of existing dams;

1028 (b) mutual irrigation companies and water users associations cannot afford to bring
1029 dams into conformance with the state's current minimum safety standards without financial
1030 assistance from the state;

1031 (c) due to limited financial, physical, and human resources, it is necessary to establish
1032 priorities for the upgrade of dams; and

1033 (d) the state and its officers and employees are immune from suit for any injury or
1034 damage resulting from the exercise or performance or the failure to exercise or perform any
1035 function pursuant to this chapter.

1036 (2) The [~~state engineer~~] Water Rights Board shall establish minimum standards for
1037 existing high hazard dams by rule. The standards for existing high hazard dams may differ
1038 from the design criteria established for new construction.

1039 (3) No seismic standards shall be established for existing high hazard dams within the
1040 flood control use classification.

1041 (4) (a) In implementing this section, the state engineer will develop a priority list of
1042 high hazard dams. The list will be determined by calculating the relative anticipated breach
1043 flows in the event of a dam failure. The dams will be ranked from the largest breach flow to
1044 the smallest for all high hazard dams.

1045 (b) The state engineer shall investigate annually 25 dams on the priority list in order of
1046 their ranking to determine in what areas they are deficient or do not meet minimum standards.

1047 (c) Once a determination is made, the owner will be notified that the owner will be
1048 required to undertake investigations to determine requirements necessary to bring the dam into

1049 compliance with minimum standards.

1050 (d) Once the owner has been informed of the deficiencies of the dam, the owner will be
1051 given 90 days to respond, in writing, as to what steps the owner is taking to investigate the
1052 deficiencies and the time required to complete the investigations.

1053 (e) The state engineer will review the proposal, and if it appears reasonable, will
1054 approve it.

1055 (5) The state engineer may not require any mutual irrigation company or water users
1056 association to upgrade a dam in conformance with minimum standards, unless a grant to pay
1057 for 80% of the costs is made available from the Board of Water Resources.

1058 Section 31. Section **73-5a-602** is amended to read:

1059 **73-5a-602. Contents of emergency action plans.**

1060 [~~By May 1, 1991, the state engineer~~] The Water Rights Board shall adopt rules
1061 specifying the contents of an emergency action plan.

1062 Section 32. Section **73-6-1** is amended to read:

1063 **73-6-1. Suspension of right to appropriate -- By proclamation of governor.**

1064 For the purpose of preserving the surplus and unappropriated waters of any stream or
1065 other source of water supply for use by irrigation districts and organized agricultural water
1066 users, or for any use whatsoever, when in the judgment of the governor and the [~~state engineer~~]
1067 Water Rights Board the welfare of the state demands it, the governor by proclamation may,
1068 upon the recommendation of the [~~state engineer~~] Water Rights Board, suspend the right of the
1069 public to appropriate such surplus or unappropriated waters.

1070 Section 33. Section **73-6-2** is amended to read:

1071 **73-6-2. Restoration by proclamation -- Priority of applications.**

1072 Waters withdrawn from appropriation under this chapter may be restored by
1073 proclamation of the governor upon the recommendation of the [~~state engineer~~] Water Rights
1074 Board. Such proclamation shall not become effective until notice thereof has been published at
1075 least once a week for three successive weeks in a newspaper of general circulation within the
1076 boundaries of the river system or water source within which the waters so to be restored are
1077 situated. Applications for appropriations shall not be filed during the time such waters are
1078 withdrawn from appropriation; provided, that after the first publication of notice aforesaid
1079 applications may be deposited with the state engineer and at the time such proclamation

1080 becomes effective the engineer shall hold public hearings, giving all applicants notice, to
1081 determine which applications so filed during the period of publication of such notice are most
1082 conducive to the public good, and shall file such applications in order of priority according to
1083 such determination.

1084 Section 34. Section **73-22-5** is amended to read:

1085 **73-22-5. Jurisdiction of division -- Hearings -- Subpoena power -- Restraining**
1086 **violations -- Actions for damages against violators unaffected.**

1087 (1) (a) The division has jurisdiction and authority over all persons and property, public
1088 and private, necessary to enforce the provisions of this chapter [~~and may enact, issue, and~~
1089 ~~enforce~~].

1090 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1091 Water Rights Board shall make rules necessary [~~rules and orders~~] to carry out the requirements
1092 of this chapter.

1093 (2) (a) Any affected person may apply for a hearing before the division, or the division
1094 may initiate proceedings upon any question relating to the administration of this chapter by
1095 following the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures
1096 Act.

1097 (b) The Division of Water Rights shall comply with the procedures and requirements
1098 of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.

1099 (3) The division shall have the power to summon witnesses, to administer oaths, and to
1100 require the production of records, books, and documents for examination at any hearing or
1101 investigation conducted by it.

1102 (4) (a) If any person fails or refuses to comply with a subpoena issued by the division,
1103 or if any witness fails or refuses to testify about any matter regarding which he may be
1104 interrogated, the division may petition any district court in the state to issue an order
1105 compelling the person to:

1106 (i) comply with the subpoena and attend before the division;

1107 (ii) produce any records, books, and documents covered by the subpoena; or

1108 (iii) to give testimony.

1109 (b) The court may punish failure to comply with the order as contempt.

1110 (5) (a) Whenever it appears that any person is violating or threatening to violate any

1111 provision of this chapter, or any rule or order made under this chapter, the division may file suit
1112 in the name of the state to restrain that person from continuing the violation or from carrying
1113 out the threat of violation.

1114 (b) Venue for the action is in the district court in the county where any defendant
1115 resides or in the county where the violation is alleged to have occurred.

1116 (6) (a) Nothing in this chapter, no suit by or against the division, and no violation
1117 charged or asserted against any person under this chapter, or any rule or order issued under it,
1118 shall impair, abridge, or delay any cause of action for damages that any person may have or
1119 assert against any person violating this chapter, or any rule or order issued under it.

1120 (b) Any person so damaged by the violation may sue for and recover whatever damages
1121 that he is otherwise entitled to receive.

1122 Section 35. Section **73-22-6** is amended to read:

1123 **73-22-6. Information required concerning resource development --**
1124 **Confidentiality -- Regulation of wells -- Surety bonds -- Inspection.**

1125 (1) The division shall have authority to require:

1126 (a) Identification of the location and ownership of all wells and producing geothermal
1127 leases.

1128 (b) Filing with the division of a notice of intent to drill, redrill, deepen, permanently
1129 alter the casing of, or abandon any well. Approval of the notice of intent must be obtained from
1130 the division prior to commencement of operations.

1131 (c) Keeping of well logs and filing true and correct copies with the division. These
1132 records are public records when filed with the division, unless the owner or operator requests,
1133 in writing, that the records be held confidential. The period of confidentiality shall be
1134 established by the division, not to exceed five years from the date of production or injection for
1135 other than testing purposes or five years from the date of abandonment, whichever occurs first,
1136 as determined by the division. Well records held confidential by the division are open to
1137 inspection by those persons authorized in writing by the owner or operator. Confidential status
1138 shall not restrict inspection by state officers charged with regulating well operations or by
1139 authorized officials of the Utah State Tax Commission for purposes of tax assessment.

1140 (d) The spacing, drilling, casing, testing, operating, producing, and abandonment of
1141 wells so as to prevent:

1142 (i) geothermal resources, water, gases, or other fluids from escaping into strata other
1143 than the strata in which they are found (unless in accordance with a subsurface injection
1144 program approved by the division);

1145 (ii) pollution of surface and groundwater;

1146 (iii) premature cooling of any geothermal system by water encroachment or otherwise
1147 which tends to reduce the ultimate economic recovery of the geothermal resources;

1148 (iv) blowouts, cave-ins, and seepage; and

1149 (v) unreasonable disturbance or injury to neighboring properties, prior water rights,
1150 human life, health, and the environment.

1151 (e) The operator to file cash or individual surety bonds with the division for each new
1152 well drilled and each abandoned well redrilled. The amount of surety required shall be
1153 determined by the [~~division~~] Water Rights Board. In lieu of bonds for separate wells, the
1154 operator may file a blanket cash or individual surety bond in an amount set by the division to
1155 cover all the operator's drilling, redrilling, deepening, maintenance, or abandonment activities
1156 for wells in the state. Bonds filed with the division shall be executed by the operator, as
1157 principal, conditioned on compliance with division regulations in drilling, redrilling,
1158 deepening, maintaining, or abandoning any well or wells covered by the bond and shall secure
1159 the state against all losses, charges, and expenses incurred by it to obtain such compliance by
1160 the principal named in the bond.

1161 (f) The geothermal owner or operator to measure geothermal production according to
1162 standards set by the division and maintain complete and accurate production records. The
1163 records, or certified copies of them, shall be preserved on file by the owner or operator for a
1164 period of five years and shall be available for examination by the division at all reasonable
1165 times.

1166 (g) Filing with the division any other reasonable reports which it prescribes regarding
1167 geothermal operations within the state.

1168 (2) Any bond filed with the division in conformance with this chapter may, with the
1169 consent of the division, be terminated and canceled and the surety be relieved of all obligations
1170 under it when the well or wells covered by the bond have been properly abandoned or another
1171 valid bond has been substituted for it.

1172 (3) The division may enter onto private or public land at any time to inspect any well or

1173 geothermal resource development project to determine if the well or project is being
1174 constructed, operated, or maintained according to any applicable permits or to determine if the
1175 construction, operation, or maintenance of the well or project may involve an unreasonable risk
1176 to life, health, property, the environment or subsurface, surface, or atmospheric resources.

1177 Section 36. Section **73-22-10** is amended to read:

1178 **73-22-10. Judicial and administrative review of division actions -- Falsification or**
1179 **omission of filings as misdemeanor -- Limitation of actions.**

1180 (1) (a) Any person aggrieved by any order issued under this chapter may obtain:

1181 (i) administrative review by the Water Rights Board in accordance with Section
1182 73-2-31; or

1183 (ii) judicial review.

1184 (b) Venue for judicial review of informal adjudicative proceedings is in the district
1185 court of Salt Lake County, or in the district court of the county in which the complaining
1186 person resides.

1187 (2) An action or appeal involving any provision of this chapter, or a rule or order
1188 issued under it shall be determined as expeditiously as possible.

1189 (3) Any person who, for the purpose of evading this chapter or any order of the
1190 division issued under it, makes or causes to be made any false entry in any report, record,
1191 account, or memorandum required by this chapter, or by any order issued under it, or omits or
1192 causes to be omitted from the report, record, account, or memorandum, full, true, and correct
1193 entries as required by this chapter, or by an order, or removes from this state or destroys,
1194 mutilates, alters, or falsifies the record, account, or memorandum, is guilty of a class A
1195 misdemeanor.

1196 (4) No suit, action, or other proceeding based upon a violation of this chapter or any
1197 order of the division issued under it may be begun or maintained unless the action is begun
1198 within two years from the date of the alleged violation.

S.B. 85 2nd Sub. (Salmon) - Water Rights Board

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will require additional appropriations from the General Fund to the Division of Water Rights as follows: \$394,600 for FY 2009 and \$366,600 for FY 2010.

	<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	\$366,600	\$366,600	\$0	\$0	\$0
General Fund, One-Time	\$0	\$28,000	\$0	\$0	\$0	\$0
Total	\$0	\$394,600	\$366,600	\$0	\$0	\$0

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.