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WATER BANKING

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows the banking of water rights, administered by a local district.

Highlighted Provisions:

This bill:

- ▶ allows a local district participating in water banking to satisfy safe yield requirements of a groundwater management plan by holding rights for nonuse;
- ▶ allows a local district to participate in water banking;
- ▶ provides for the use, lease, purchase, sale, or nonuse of water rights by a local district participating in water banking;
- ▶ allows a local district participating in water banking to file a water right change application;
- ▶ addresses the relation of forfeiture provisions to water rights held by a local district;
- ▶ requires an annual report by a local district; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 73-5-15, as last amended by Laws of Utah 2009, Chapter 388

29 ENACTS:

30 73-5-16, Utah Code Annotated 1953



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

32 Section 1. Section 73-5-15 is amended to read:

33 **73-5-15. Groundwater management plan -- Water management authority.**

34 (1) As used in this section:

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

37 (b) "Local district" means:

38 (i) a district created in accordance with Title 17B, Limited Purpose Local Government
39 Entities - Local Districts; or

40 (ii) a county or portion of a county that is not in the boundary of a water conservancy
41 district.

42 [(b)] (c) "Safe yield" means the amount of groundwater that can be withdrawn from a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

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

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

- 50 (i) limit groundwater withdrawals to safe yield;
- 51 (ii) protect the physical integrity of the aquifer; and
- 52 (iii) protect water quality.

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

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

- 57 (i) the hydrology of the groundwater basin;
- 58

- 59 (ii) the physical characteristics of the groundwater basin;
- 60 (iii) the relationship between surface water and groundwater, including whether the
- 61 groundwater should be managed in conjunction with hydrologically connected surface waters;
- 62 (iv) the geographic spacing and location of groundwater withdrawals;
- 63 (v) water quality;
- 64 (vi) local well interference; and
- 65 (vii) other relevant factors.

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

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

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

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

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

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

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

79 (iii) If the state engineer determines that groundwater withdrawals in a groundwater
80 basin exceed the safe yield, the state engineer shall regulate groundwater rights in that
81 groundwater basin based on the priority date of the water rights under the groundwater
82 management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a
83 different distribution or a local district participating in water banking holds sufficient water
84 rights for nonuse to meet the groundwater management plan requirements.

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

89 (c) (i) In consultation with the state engineer, water users in a groundwater basin may

90 agree to participate in a voluntary arrangement for managing withdrawals at any time, either
91 before or after a determination that groundwater withdrawals exceed the groundwater basin's
92 safe yield.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (d) (i) at least 60 days [~~prior to~~] before final adoption of the groundwater management

121 plan, publish notice:

122 (A) that a draft of the groundwater management plan [~~has been~~] is proposed; and

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

124 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of

125 the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and

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

127 (6) A groundwater management plan [~~shall become~~] becomes effective on the date
128 notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.

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

130 (i) published:

131 (A) once a week for two successive weeks in a newspaper of general circulation in
132 each county that encompasses a portion of the land area proposed to be included within the

133 groundwater management plan; and

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

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

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

138 (A) county;

139 (B) incorporated city or town;

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

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

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

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

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

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

149 (I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water
150 Conservancy District Act; [~~and~~]

151 (J) conservation district, under Title 17D, Chapter 3, Conservation District Act[~~-~~]; and

152 (K) local district, under Title 17B, Limited Purpose Local Government Entities - Local
153 Districts, participating in water banking in accordance with Section 73-5-16.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

194 (11) A groundwater management plan adopted or amended in accordance with this
195 section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative
196 Rulemaking Act.

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

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

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

205 (15) (a) A groundwater management plan adopted by the state engineer before May 1,
206 2006, remains in force and has the same legal effect as it had on the day on which it was
207 adopted by the state engineer.

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

210 Section 2. Section **73-5-16** is enacted to read:

211 **73-5-16. Water banking by local district -- Powers -- Forfeiture -- Reports.**

212 (1) As used in this section:

213 (a) "Local district" means:

214 (i) a district created in accordance with Title 17B, Limited Purpose Local Government
215 Entities - Local Districts; or

216 (ii) a county or portion of a county that is not in the boundary of a water conservancy
217 district.

218 (b) "Water banking" means a local district's valid holding of one or more water rights
219 for use, lease, sale, or nonuse to meet safe yield requirements, in accordance with this section.

220 (2) A local district may participate in water banking within its territory to facilitate the
221 use, lease, sale, or nonuse to meet groundwater withdrawal requirements of one or more water
222 rights.

223 (3) A local district participating in water banking may do the following, subject to any
224 contractual limitation and applicable law governing the appropriation and use of water, within
225 the local district's territory:

226 (a) lease, purchase, manage, or otherwise administer a valid water right;

227 (b) manage the use of a water right held or administered by the local district; and

228 (c) file an application to change a point of diversion, place of use, or purpose of use
229 concerning a valid water right if the local district owns the water right or has the contractual
230 right to file the application.

231 (4) A local district participating in water banking is subject to an existing groundwater
232 management plan imposed by the state engineer.

233 (5) A water right transferred in a manner that does not result in a permanent divestiture
234 of the water right by the transferor shall continue to be titled in the transferor's name unless
235 otherwise allowed by contract.

236 (6) (a) Except as provided in Subsection (6)(b), a water right subject to a local district's
237 water banking is subject to forfeiture provisions contained in Section 73-1-4.

238 (b) A water right that a local district participating in water banking holds for nonuse to
239 regulate groundwater withdrawal requirements is not subject to forfeiture provisions contained
240 in Section 73-1-4.

241 (7) By January 31 of each year, a local district participating in water banking shall
242 report to the state engineer and the Board of Water Resources all transactions involving a water
243 right for the previous calendar year.

Legislative Review Note
as of 1-11-10 6:34 AM

Office of Legislative Research and General Counsel

H.B. 84 - Water Banking

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
