

WATER CONVEYANCE FACILITY AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 73, Chapter 10, Board of Water Resources - Division of Water Resources.

Highlighted Provisions:

This bill:

- ▶ amends the definition of water conveyance system; and
- ▶ provides an exemption from certain water conveyance facility management plan requirements to owners of certain ditch systems.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-10-33, as enacted by Laws of Utah 2010, Chapter 113

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

Section 1. Section **73-10-33** is amended to read:

73-10-33. Management plan for water conveyance facilities.

(1) As used in this section:



28 (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.

29 (b) "Conservation district" means a conservation district created under Title 17D,
30 Chapter 3, Conservation District Act.

31 (c) "Division" means the Division of Water Resources created by Section 73-10-18.

32 (d) "Facility owner or operator" means:

33 (i) a water company as defined in Subsection 73-3-3.5(1)(b); or

34 (ii) an owner or operator of a water conveyance facility.

35 (e) "Management plan" means a written document meeting the requirements of
36 Subsection (3).

37 (f) "Potential risk" means a condition where, if a water conveyance facility fails, the
38 failure would create a high probability of:

39 (i) causing loss of human life; or

40 (ii) causing extensive economic loss, including damage to critical transportation
41 facilities, utility facilities, or public buildings.

42 (g) "Potential risk location" means a segment of a water conveyance facility that
43 constitutes a potential risk due to:

44 (i) location;

45 (ii) elevation;

46 (iii) soil conditions;

47 (iv) structural instability;

48 (v) water volume or pressure; or

49 (vi) other conditions.

50 (h) (i) "Water conveyance facility" means a water conveyance defined in Section
51 57-13a-101.

52 (ii) "Water conveyance facility" does not include:

53 (A) a pipeline conveying water for industrial use, or municipal use, within a public
54 water system as defined in Section 19-4-102;

55 (B) a natural channel used to convey water for use within a water conveyance facility;

56 [or]

57 (C) a fully piped, pressurized irrigation system[-]; or

58 (D) a ditch system that carries less than ~~15~~ 10 ~~cubic feet per second of water.~~

59 (2) (a) For a water conveyance facility that has a potential risk location, the board or
60 division may issue a grant or loan to the facility owner or operator, and the facility owner or
61 operator may receive state money for water development or water conveyance facility repair or
62 improvements, only if the facility owner or operator promptly adopts a management plan in
63 accordance with this section.

64 (b) For a management plan to be considered to be promptly adopted for purposes of
65 this Subsection (2), the facility owner or operator shall:

66 (i) adopt the management plan by an affirmative vote of the facility owner or operator's
67 board of directors, or persons occupying a similar status or performing similar functions before
68 receiving money under Subsection (2)(a);

69 (ii) (A) adopt the management plan as described in Subsection (2)(b)(i) by no later
70 than:

71 (I) May 1, 2013, for a water conveyance facility in operation on May 11, 2011; or

72 (II) for a water conveyance facility that begins operation after May 11, 2011, one year
73 after the day on which the water conveyance facility begins operation; or

74 (B) (I) adopt the management plan as described in Subsection (2)(b)(i); and

75 (II) provide written justification satisfactory to the board as to why the facility owner or
76 operator was unable to adopt a management plan during the time period provided in Subsection
77 (2)(b)(ii)(A); and

78 (iii) update the management plan adopted under Subsection (2)(b)(i) no less frequently
79 than every 10 years.

80 (3) A management plan described in Subsection (2) shall include at least the following:

81 (a) a GIS coverage or drawing of each potential risk location of a water conveyance
82 facility identifying any:

83 (i) existing canal and lateral alignment of the canal facility;

84 (ii) point of diversion;

85 (iii) bridge;

86 (iv) culvert;

87 (v) screen or trash rack; and

88 (vi) spill point;

89 (b) an evaluation of any potential slope instability that may cause a potential risk,

90 including:

91 (i) failure of the facility;

92 (ii) land movement that might result in failure of the facility; or

93 (iii) land movement that might result from failure of the facility;

94 (c) proof of insurance coverage or other means of financial responsibility against
95 liability resulting from failure of the water conveyance facility;

96 (d) a maintenance and improvement plan;

97 (e) a schedule for implementation of a maintenance and improvement plan;

98 (f) an emergency response plan that:

99 (i) is developed after consultation with local emergency response officials;

100 (ii) is updated annually; and

101 (iii) includes, in the case of an emergency, how a first responder can:

102 (A) contact the facility owner or operator; and

103 (B) obtain information described in Subsection (3)(a);

104 (g) any potential source of financing for maintenance and improvements under a
105 maintenance and improvement plan;

106 (h) identification of each municipality or county through which water is conveyed or
107 delivered by the water conveyance facility;

108 (i) a statement concerning whether storm water enters the water conveyance facility;
109 and

110 (j) if storm water enters the water conveyance facility:

111 (i) an estimate of the maximum volume and flow of all water present in the water
112 conveyance facility as a result of a six-hour, 25-year storm event;

113 (ii) on the basis of information provided in accordance with Subsection (4),

114 identification of the points at which any storm structures introduce water into the water
115 conveyance facility and the anticipated flow that may occur at each structure; and

116 (iii) the name of each governmental agency that has responsibility for storm water
117 management within the area from which storm water drains into the water conveyance facility.

118 (4) A private or public entity that introduces storm water into a water conveyance
119 facility shall provide the facility owner or operator with an estimate of the maximum volume
120 and flow of water that may occur at each structure that introduces storm water into the water

121 conveyance facility.

122 (5) (a) A facility owner or operator of a water conveyance facility shall provide a
123 municipality or county in which is located a potential risk location of the water conveyance
124 facility an outline of the information provided in Subsection (3)(f).

125 (b) A facility owner or operator shall give notice to the planning and zoning
126 department of each municipality and county identified in Subsection (3)(h) outlining the
127 information provided in Subsections (3)(f), (i), and (j).

128 (c) An outline of information provided under this Subsection (5) is a protected record
129 under Section [63G-2-305](#).

130 (6) (a) The division may provide information and technical resources to a facility
131 owner or operator of a water conveyance facility, regardless of whether the water conveyance
132 facility has a potential risk location.

133 (b) In providing the information and resources described in Subsection (5)(a), the
134 division may coordinate with efforts of any association of conservation districts that may
135 provide similar information and technical resources.

136 (c) The information and technical resources described in Subsection (5)(a) include:

137 (i) engaging state and local water users in voluntary completion of a management plan;

138 (ii) developing standard guidelines, checklists, or templates that may be used by a
139 facility owner or operator;

140 (iii) using conservation districts as points of contact with a facility owner or operator;

141 (iv) providing training to help a facility owner or operator to adopt a management plan;

142 and

143 (v) assisting, at the request and under the direction of, a facility owner or operator with
144 efforts to adopt or implement a management plan.

145 (7) (a) A facility owner or operator of a water conveyance facility that has a potential
146 risk location shall provide the board or division upon request:

147 (i) written certification signed under oath by a person authorized to act for the board of
148 directors or persons occupying a similar status or performing similar functions, certifying that
149 the management plan complies with this section; and

150 (ii) an opportunity to review a management plan.

151 (b) A management plan received by the board or division under this section is a

152 protected record under Section 63G-2-305.

153 (8) The board shall report concerning compliance with this section to the Natural
154 Resources, Agriculture, and Environment Interim Committee of the Legislature before
155 November 30, 2013.

156 (9) The division and board may make rules, in accordance with Title 63G, Chapter 3,
157 Utah Administrative Rulemaking Act, concerning the requirements of this section.

158 (10) This section does not:

159 (a) create a private right of action for a violation of this section; or

160 (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility
161 owner or operator in a civil action for a cause of action that is not based on a violation of this
162 section.

163 (11) The following may not be introduced as evidence in any civil litigation on the
164 issue of negligence, injury, or the calculation of damages:

165 (a) a management plan prepared in accordance with this section;

166 (b) the failure to prepare or adopt a management plan in accordance with this section;

167 or

168 (c) the failure to update a management plan in accordance with this section.

Legislative Review Note
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Office of Legislative Research and General Counsel