

# HB0439S02 compared with HB0439

~~{Omitted text}~~ shows text that was in HB0439 but was omitted in HB0439S02  
inserted text shows text that was not in HB0439 but was inserted into HB0439S02

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1

**Water Planning Amendments**  
2026 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: David Shallenberger**  
Senate Sponsor:



2

3 **LONG TITLE**

4 **General Description:**

5 This bill modifies provisions related to the planning of future water supply.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ defines and modifies terms;
- 9 ▶ ~~{ provides that the state engineer may grant a non-use application for a qualified entity's~~  
10 ~~water right; }~~
- 11 ▶ requires counties, municipalities, and special districts to adopt a written plan , beginning on  
12 January 1, 2028, for determining the reasonable future water requirement of the public before imposing  
13 a water exaction;
- 14 ▶ requires the state engineer to make rules to establish standards for the written plan; {and}
- 15 ▶ provides a coordination clause with S.B. 284, Local Land Use Modifications, to address a  
16 requirement for counties and municipalities to complete a written plan; and
- ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

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17 None

18 **Other Special Clauses:**

19 This bill provides coordination clauses.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **10-20-911 (Effective 05/06/26)**, as renumbered and amended by Laws of Utah 2025, First Special  
Session, Chapter 15

24 **17-79-812 (Effective 05/06/26)**, as renumbered and amended by Laws of Utah 2025, First Special  
Session, Chapter 14

26 **17B-1-120 (Effective 05/06/26)**, as last amended by Laws of Utah 2023, Chapters 15, 255

27 **73-1-4 (Effective 05/06/26) (Partially Repealed 12/31/30)**, as last amended by Laws of Utah  
2024, Chapter 233

29 **Utah Code Sections affected by Coordination Clause:**

30 **10-20-912 (05/06/26)** , as as enacted in S.B. 284 (2026)

31 **17-79-813 (05/06/26)** , as as enacted in S.B. 284 (2026)

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

34 Section 1. Section **10-20-911** is amended to read:

35 **10-20-911. Exactions -- Exaction for water interest -- Requirement to offer to original owner  
property acquired by exaction.**

34 (1) A municipality may impose an exaction or exactions on development proposed in a land use  
application, including, subject to Subsection (3), an exaction for a water interest, if:

36 (a) an essential link exists between a legitimate governmental interest and each exaction; and

38 (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed  
development.

40 (2) If a land use authority imposes an exaction for another governmental entity:

41 (a) the governmental entity shall request the exaction; and

42 (b) the land use authority shall transfer the exaction to the governmental entity for which it was exacted.

44 (3)

(a)

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- (i) Subject to the requirements of this Subsection (3), a municipality shall base an exaction for a water interest on the culinary water authority's established calculations of projected water interest requirements.
- 47 (ii) Except as described in Subsection (3)(a)(iii), a culinary water authority shall base an exaction  
for a culinary water interest on:
- 49 (A) consideration of the system-wide minimum sizing standards established for the culinary water  
authority by the Division of Drinking Water in accordance with Section 19-4-114; and
- 52 (B) the number of equivalent residential connections associated with the culinary water demand for  
each specific development proposed in the development's land use application, applying lower  
exactions for developments with lower equivalent residential connections as demonstrated by at  
least five years of usage data for like land uses within the municipality.
- 57 (iii) A municipality may impose an exaction for a culinary water interest that results in less water  
being exacted than would otherwise be exacted under Subsection (3)(a)(ii) if the municipality, at  
the municipality's sole discretion, determines there is good cause to do so.
- 61 (iv)
- (A) A municipality shall make public the methodology used to comply with Subsection (3)(a)(ii)(B).
- 63 (B) A land use applicant may appeal to the municipality's governing body an exaction calculation used  
by the municipality under Subsection (3)(a)(ii).
- 65 (C) A land use applicant may present data and other information that illustrates a need for an exaction  
recalculation and the municipality's governing body shall respond with due process.
- 68 (v) Upon an applicant's request, the culinary water authority shall provide the applicant with the  
basis for the culinary water authority's calculations under Subsection (3)(a)(i) on which an  
exaction for a water interest is based.
- 71 (b)
- (i) A municipality may not impose an exaction for a water interest if:
- 72 (A) the culinary water authority's existing available water interests exceed the water interests  
needed to meet the reasonable future water requirement of the public~~[- as determined under  
Subsection 73-1-4(2)(f).]~~ ; or
- 75 (B) the municipality or the municipality's culinary water authority does not have a written plan  
{ ~~described~~ } in accordance with Subsection (3)(b)(ii).

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(ii) Beginning on January 1, {2027} 2028, a municipality shall determine the municipality's water interests needed to meet the reasonable future water requirement of the public by completing a written plan described in Subsection 73-1-4(2)(f).

80 (4)

(a) If a municipality plans to dispose of surplus real property that was acquired under this section and has been owned by the municipality for less than 15 years, the municipality shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the municipality.

84 (b) A person to whom a municipality offers to reconvey property under Subsection (4)(a) has 90 days to accept or reject the municipality's offer.

86 (c) If a person to whom a municipality offers to reconvey property declines the offer, the municipality may offer the property for sale.

88 (d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by a community reinvestment agency.

90 (5)

(a) A municipality may not, as part of an infrastructure improvement, require the installation of pavement on a residential roadway at a width in excess of 32 feet.

92 (b) Subsection (5)(a) does not apply if a municipality requires the installation of pavement in excess of 32 feet:

94 (i) in a vehicle turnaround area;

95 (ii) in a cul-de-sac;

96 (iii) to address specific traffic flow constraints at an intersection, mid-block crossings, or other areas;

98 (iv) to address an applicable general or master plan improvement, including transportation, bicycle lanes, trails, or other similar improvements that are not included within an impact fee area;

101 (v) to address traffic flow constraints for service to or abutting higher density developments or uses that generate higher traffic volumes, including community centers, schools, and other similar uses;

104 (vi) as needed for the installation or location of a utility which is maintained by the municipality and is considered a transmission line or requires additional roadway width;

107 (vii) for third-party utility lines that have an easement preventing the installation of utilities maintained by the municipality within the roadway;

109 (viii) for utilities over 12 feet in depth;

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- 110 (ix) for roadways with a design speed that exceeds 25 miles per hour;  
111 (x) as needed for flood and stormwater routing;  
112 (xi) as needed to meet fire code requirements for parking and hydrants; or  
113 (xii) as needed to accommodate street parking.
- 114 (c) Nothing in this section shall be construed to prevent a municipality from approving a road cross  
section with a pavement width less than 32 feet.
- 116 (d)
- (i) A land use applicant may appeal a municipal requirement for pavement in excess of 32 feet on a  
residential roadway.
- 118 (ii) A land use applicant that has appealed a municipal specification for a residential roadway pavement  
width in excess of 32 feet may request that the municipality assemble a panel of qualified experts to  
serve as the appeal authority for purposes of determining the technical aspects of the appeal.
- 122 (iii) Unless otherwise agreed by the applicant and the municipality, the panel described in Subsection  
(5)(d)(ii) shall consist of the following three experts:
- 124 (A) one licensed engineer, designated by the municipality;  
125 (B) one licensed engineer, designated by the land use applicant; and  
126 (C) one licensed engineer, agreed upon and designated by the two designated engineers under  
Subsections (5)(d)(iii)(A) and (B).
- 128 (iv) A member of the panel assembled by the municipality under Subsection (5)(d)(ii) may not have an  
interest in the application that is the subject of the appeal.
- 130 (v) The land use applicant shall pay:
- 131 (A) 50% of the cost of the panel; and  
132 (B) the municipality's published appeal fee.
- 133 (vi) The decision of the panel is a final decision, subject to a petition for review under Subsection (5)(d)  
(vii).
- 135 (vii) In accordance with Section 10-20-1109, a land use applicant or the municipality may file a petition  
for review of the decision with the district court within 30 days after the date that the decision is  
final.
- 138 (6) A provider of culinary or secondary water that commits to provide a water service required by a  
land use application process is subject to the provisions of this section the same as if the provider  
were a municipality.

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144 Section 2. Section 17-79-812 is amended to read:

145 **17-79-812. Exactions -- Exaction for water interest -- Requirement to offer to original owner**  
**property acquired by exaction.**

144 (1) A county may impose an exaction or exactions on development proposed in a land use application,  
including, subject to Subsection (3), an exaction for a water interest, if:

146 (a) an essential link exists between a legitimate governmental interest and each exaction; and

148 (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed  
development.

150 (2) If a land use authority imposes an exaction for another governmental entity:

151 (a) the governmental entity shall request the exaction; and

152 (b) the land use authority shall transfer the exaction to the governmental entity for which it was exacted.

154 (3)

(a)

(i) Subject to the requirements of this Subsection (3), a county or, if applicable, the county's  
culinary water authority shall base any exaction for a water interest on the culinary water  
authority's established calculations of projected water interest requirements.

158 (ii) Except as described in Subsection (3)(a)(iii), a culinary water authority shall base an exaction  
for a culinary water interest on:

160 (A) consideration of the system-wide minimum sizing standards established for the culinary water  
authority by the Division of Drinking Water in accordance with Section 19-4-114; and

163 (B) the number of equivalent residential connections associated with the culinary water demand for  
each specific development proposed in the development's land use application, applying lower  
exactions for developments with lower equivalent residential connections as demonstrated by at  
least five years of usage data for like land uses within the county.

168 (iii) A county or culinary water authority may impose an exaction for a culinary water interest that  
results in less water being exacted than would otherwise be exacted under Subsection (3)(a)

(ii) if the county or culinary water authority, at the county's or culinary water authority's sole  
discretion, determines there is good cause to do so.

173 (iv) A county shall make public the methodology used to comply with Subsection (3)(a)(ii)(B).

A land use applicant may appeal to the county's governing body an exaction calculation used  
by the county or the county's culinary water authority under Subsection (3)(a)(ii). A land

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use applicant may present data and other information that illustrates a need for an exaction recalculation and the county's governing body shall respond with due process.

- 179 (v) Upon an applicant's request, the culinary water authority shall provide the applicant with the  
basis for the culinary water authority's calculations under Subsection (3)(a)(i) on which an  
exaction for a water interest is based.
- 182 (b)
- (i) A county or the county's culinary water authority may not impose an exaction for a water interest if:
- 184 (A) the culinary water authority's existing available water interests exceed the water interests  
needed to meet the reasonable future water requirement of the public~~[, as determined under  
Subsection 73-1-4(2)(f).]~~ ; or
- 187 (B) the county or the county's culinary water authority does not have a written plan {described} in  
accordance with Subsection (3)(b)(ii).
- 189 (ii) Beginning on January 1, {2027} 2028, a county shall determine the county's water interests needed  
to meet the reasonable future water requirement of the public by completing a written plan described  
in Subsection 73-1-4(2)(f).
- 192 (4)
- (a) If a county plans to dispose of surplus real property under Section 17-78-103 that was acquired  
under this section and has been owned by the county for less than 15 years, the county shall first  
offer to reconvey the property, without receiving additional consideration, to the person who granted  
the property to the county.
- 196 (b) A person to whom a county offers to reconvey property under Subsection (4)(a) has 90 days to  
accept or reject the county's offer.
- 198 (c) If a person to whom a county offers to reconvey property declines the offer, the county may offer  
the property for sale.
- 200 (d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by a community  
development or urban renewal agency.
- 202 (5)
- (a) A county may not, as part of an infrastructure improvement, require the installation of pavement on  
a residential roadway at a width in excess of 32 feet.
- 204 (b) Subsection (5)(a) does not apply if a county requires the installation of pavement in excess of 32  
feet:

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- 206 (i) in a vehicle turnaround area;
- 207 (ii) in a cul-de-sac;
- 208 (iii) to address specific traffic flow constraints at an intersection, mid-block crossings, or other areas;
- 210 (iv) to address an applicable general or master plan improvement, including transportation, bicycle  
lanes, trails, or other similar improvements that are not included within an impact fee area;
- 213 (v) to address traffic flow constraints for service to or abutting higher density developments or uses that  
generate higher traffic volumes, including community centers, schools, and other similar uses;
- 216 (vi) as needed for the installation or location of a utility which is maintained by the county and is  
considered a transmission line or requires additional roadway width;
- 218 (vii) for third-party utility lines that have an easement preventing the installation of utilities maintained  
by the county within the roadway;
- 220 (viii) for utilities over 12 feet in depth;
- 221 (ix) for roadways with a design speed that exceeds 25 miles per hour;
- 222 (x) as needed for flood and stormwater routing;
- 223 (xi) as needed to meet fire code requirements for parking and hydrants; or
- 224 (xii) as needed to accommodate street parking.
- 225 (c) Nothing in this section shall be construed to prevent a county from approving a road cross section  
with a pavement width less than 32 feet.
- 227 (d)
- (i) A land use applicant may appeal a municipal requirement for pavement in excess of 32 feet on a  
residential roadway.
- 229 (ii) A land use applicant that has appealed a municipal specification for a residential roadway pavement  
width in excess of 32 feet may request that the county assemble a panel of qualified experts to serve  
as the appeal authority for purposes of determining the technical aspects of the appeal.
- 233 (iii) Unless otherwise agreed by the applicant and the county, the panel described in Subsection (5)(d)  
(ii) shall consist of the following three experts:
- 235 (A) one licensed engineer, designated by the county;
- 236 (B) one licensed engineer, designated by the land use applicant; and
- 237 (C) one licensed engineer, agreed upon and designated by the two designated engineers under  
Subsections (5)(d)(iii)(A) and (B).

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(iv) A member of the panel assembled by the county under Subsection (5)(d)(ii) may not have an interest in the application that is the subject of the appeal.

241 (v) The land use applicant shall pay:

242 (A) 50% of the cost of the panel; and

243 (B) the county's published appeal fee.

244 (vi) The decision of the panel is a final decision, subject to a petition for review under Subsection (5)(d)  
(vii).

246 (vii) In accordance with Section 17-79-1009, a land use applicant or the county may file a petition for  
review of the decision with the district court within 30 days after the date that the decision is final.

252 Section 3. Section **17B-1-120** is amended to read:

253 **17B-1-120. Exactions -- Exaction for water interest -- Requirement to offer to original owner  
property acquired by exaction.**

252 (1) A special district may impose an exaction on a service received by an applicant, including, subject  
to Subsection (2), an exaction for a water interest if:

254 (a) the special district establishes that a legitimate special district interest makes the exaction essential;  
and

256 (b) the exaction is roughly proportionate, both in nature and extent, to the impact of the proposed  
service on the special district.

258 (2)

(a)

(i) Subject to the requirements of this Subsection (2), a special district shall base an exaction for  
a water interest on the culinary water authority's established calculations of projected water  
interest requirements.

261 (ii) Except as described in Subsection (2)(a)(iii), a culinary water authority shall base an exaction  
for a culinary water interest on:

263 (A) consideration of the system-wide minimum sizing standards established for the culinary water  
authority by the Division of Drinking Water [~~pursuant to~~] in accordance with Section 19-4-114; and

266 (B) the number of equivalent residential connections associated with the culinary water demand for  
each specific development proposed in the development's land use application, applying lower  
exactions for developments with lower equivalent residential connections as demonstrated by at  
least five years of usage data for like land uses within the special district.

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- 271 (iii) A special district may impose an exaction for a culinary water interest that results in less water  
being exacted than would otherwise be exacted under Subsection (2)(a)(ii) if the special district,  
at the special district's sole discretion, determines there is good cause to do so.
- 275 (iv) A special district shall make public the methodology used to comply with Subsection (2)(a)  
(ii)(B). A service applicant may appeal to the special district's governing body an exaction  
calculation used by the special district under Subsection (2)(a)(ii). A service applicant may  
present data and other information that illustrates a need for an exaction recalculation and the  
special district's governing body shall respond with due process.
- 281 (v) If requested by a service applicant, the culinary authority shall provide the basis for the culinary  
water authority's calculations described in Subsection (2)(a)(i).
- 283 (b)
- (i) A special district may not impose an exaction for a water interest if:
- 284 (A) ~~the culinary water authority's existing available water interests exceed the water interests  
needed to meet the reasonable future water requirement of the public[~~as determined in~~  
accordance with Section 73-1-4.] ; or~~
- 287 (B) the special district or the special district's culinary water authority does not have a written plan  
{described} in accordance with Subsection (2)(b)(ii).
- 289 (ii) Beginning on January 1, {2027} 2028, a special district shall determine the special district's water  
interests needed to meet the reasonable future water requirement of the public by completing a  
written plan described in Subsection 73-1-4(2)(f).
- 292 (3)
- (a) If a special district plans to dispose of surplus real property that was acquired under this section  
and has been owned by the special district for less than 15 years, the special district shall offer to  
reconvey the surplus real property, without receiving additional consideration, first to a person who  
granted the real property to the special district.
- 297 (b) The person described in Subsection (3)(a) shall, within 90 days after the day on which a special  
district makes an offer under Subsection (3)(a), accept or reject the offer.
- 300 (c) If a person rejects an offer under Subsection (3)(b), the special district may sell the real property.
- 305 Section 4. Section **73-1-4** is amended to read:
- 306 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years  
-- Saved water -- Nonuse application.**

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- 306 (1) As used in this section:
- 307 (a) "Public entity" means:
- 308 (i) the United States;
- 309 (ii) an agency of the United States;
- 310 (iii) the state;
- 311 (iv) a state agency;
- 312 (v) a political subdivision of the state; or
- 313 (vi) an agency of a political subdivision of the state.
- 314 (b) "Public water supplier" means an entity that:
- 315 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and
- 317 (ii) is:
- 318 (A) a public entity;
- 319 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service  
Commission;
- 321 (C) a community water system:
- 322 (I) that:
- 323 (Aa) supplies water to at least 100 service connections used by year-round residents; or
- 325 (Bb) regularly serves at least 200 year-round residents; and
- 326 (II) whose voting members:
- 327 (Aa) own a share in the community water system;
- 328 (Bb) receive water from the community water system in proportion to the member's share in the  
community water system; and
- 330 (Cc) pay the rate set by the community water system based on the water the member receives; or
- 332 (D) a water users association:
- 333 (I) in which one or more public entities own at least 70% of the outstanding shares; and
- 335 (II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.
- 337 ~~{(e) "Qualified entity" mean a person authorized by statute to: }~~
- 338 ~~{(i) acquire or lease water or water rights for the benefit of the Great Salt Lake; }~~
- 339 ~~{(ii) manage sovereign lands, as that term is defined in Section 65A-1-1; or }~~
- 340 ~~{(iii) develop a management plan for the protection and development of the Colorado River system. }~~
- 342 ~~{(c)} {d}~~ "Saved water" means the same as that term is defined in Section 73-3-3.

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- 343 ~~{(d)}~~ ~~{(e)}~~ "Shareholder" means the same as that term is defined in Section 73-3-3.5.
- 344 ~~{(e)}~~ ~~{(f)}~~ "Water company" means the same as that term is defined in Section 73-3-3.5.
- 345 ~~{(f)}~~ ~~{(g)}~~ "Water supply entity" means an entity that supplies water as a utility service or for  
irrigation purposes and is also:
- 347 (i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other  
public agency;
- 349 (ii) a water company regulated by the Public Service Commission; or
- 350 (iii) any other owner of a community water system.
- 351 (2)
- (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor  
in interest abandons or ceases to beneficially use all or a portion of a water right for a period of at  
least seven years, the water right or the unused portion of that water right is subject to forfeiture in  
accordance with Subsection (2)(c).
- 356 (b)
- (i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the  
state engineer.
- 358 (ii) A nonuse application may be filed on all or a portion of the water right, including water rights held  
by a water company.
- 360 (iii) After giving written notice to the water company, a shareholder may file a nonuse application with  
the state engineer on the water represented by the stock.
- 362 (iv)
- (A) The approval of a nonuse application excuses the requirement of beneficial use of water from the  
date of filing.
- 364 (B) The time during which an approved nonuse application is in effect does not count toward the seven-  
year period described in Subsection (2)(a).
- 366 (v) The filing or approval of a nonuse application or a series of nonuse applications under Subsection  
(3) does not:
- 368 (A) constitute beneficial use of a water right;
- 369 (B) protect a water right that is already subject to forfeiture under this section; or
- 370 (C) bar a water right owner from:
- 371 (I) using the water under the water right as permitted under the water right; or

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- 372 (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided by law.  
374 (c)
- (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water right may not be  
forfeited unless a judicial action to declare the right forfeited is commenced:
- 377 (A) within 15 years from the end of the latest period of nonuse of at least seven years; or  
379 (B) within the combined time of 15 years from the end of the most recent period of nonuse of at  
least seven years and the time the water right was subject to one or more nonuse applications.
- 382 (ii)
- (A) The state engineer, in a proposed determination of rights filed with the court and prepared in  
accordance with Section 73-4-11, may not assert that a water right was forfeited unless the most  
recent period of nonuse of seven years ends or occurs:
- 386 (I) during the 15 years immediately preceding the day on which the state engineer files the  
proposed determination of rights with the court; or
- 388 (II) during the combined time immediately preceding the day on which the state engineer files the  
proposed determination of rights consisting of 15 years and the time the water right was subject  
to one or more approved nonuse applications.
- 392 (B) After the day on which a proposed determination of rights is filed with the court a person may  
not assert that a water right subject to that determination was forfeited before the issuance of the  
proposed determination, unless the state engineer asserts forfeiture in the proposed determination, or  
a person, in accordance with Section 73-4-11, makes an objection to the proposed determination that  
asserts forfeiture.
- 398 (iii) A water right, found to be valid in a decree entered in an action for general determination of rights  
under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-  
year period of nonuse that begins after the day on which the state engineer filed the related proposed  
determination of rights with the court, unless the decree provides otherwise.
- 403 (iv) If in a judicial action a court declares a water right forfeited, on the date on which the water right is  
forfeited:
- 405 (A) the right to beneficially use the water reverts to the public; and  
406 (B) the water made available by the forfeiture:
- 407 (I) first, satisfies other water rights in the hydrologic system in order of priority date; and  
409 (II) second, may be appropriated as provided in this title.

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- 410 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water  
or a portion of the water is:
- 412 (i) permitted to run to waste; or
- 413 (ii) beneficially used by others without right with the knowledge of the water right holder.
- 415 (e) This section does not apply to:
- 416 (i) the beneficial use of water according to a written, terminable lease or other agreement with the  
appropriator or the appropriator's successor in interest;
- 418 (ii) a water right if its place of use is contracted under an approved state agreement or federal  
conservation following program;
- 420 (iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to  
satisfy the water right;
- 422 (iv) a water right when water is unavailable because of the water right's priority date;
- 423 (v) a water right to store water in a surface reservoir, or an aquifer in accordance with Chapter 3b,  
Groundwater Recharge and Recovery Act, if the water is stored for present or future beneficial use;
- 426 (vi) a water right if a water user has beneficially used substantially all of the water right within a seven-  
year period, provided that this exemption does not apply to the adjudication of a water right in a  
general determination of water rights under Chapter 4, Determination of Water Rights;
- 430 (vii) except as provided by Subsection (2)(g), a water right:
- 431 (A)
- (I) owned by a public water supplier;
- 432 (II) represented by a public water supplier's ownership interest in a water company; or
- 434 (III) to which a public water supplier owns the right of beneficial use; and
- 435 (B) conserved or held for the reasonable future water requirement of the public, which is determined  
according to Subsection (2)(f);
- 437 (viii) a supplemental water right during a period of time when another water right available to the  
appropriator or the appropriator's successor in interest provides sufficient water so as to not require  
beneficial use of the supplemental water right;
- 440 (ix) a period of nonuse of a water right during the time the water right is subject to an approved change  
application where the applicant is diligently pursuing certification;
- 443 (x) a water right to store water in a surface reservoir if:
- 444

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- (A) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct; and
- 447 (B) not longer than seven years have elapsed since the limitation described in Subsection (2)(e)(x)(A) is imposed;
- 449 (xi) a water right subject to an approved change application for use within a water bank that has been authorized but not dissolved under Chapter 31, Water Banking Act, during the period of time the state engineer authorizes the water right to be used within the water bank; or
- 453 (xii) subject to Subsection (2)(h), that portion of a water right that is quantified as saved water in a final order from the state engineer approving a change application, but not to exceed the amount subsequently verified by the state engineer in a certificate issued under Section 73-3-17.
- 457 (f)
- (i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by:
- 459 (A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or
- 461 (B) other water use demand.
- 462 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably anticipated service area:
- 464 (A) is the area served by the community water system's distribution facilities; and
- 465 (B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.
- 467 [~~(iii) The state engineer shall by rule made in accordance with Subsection 73-2-1(4) establish standards for a written plan that may be presented as evidence in conformance with this Subsection (2)(f), except that before a rule establishing standards for a written plan under this Subsection (2)(f) takes effect, in addition to complying with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall present the rule to:]~~
- 473 [~~(A) if the Legislature is not in session, the Natural Resources, Agriculture, and Environment Interim Committee; or]~~
- 475 [~~(B) if the Legislature is in session, the House of Representatives and Senate Natural Resources, Agriculture, and Environment standing committees.]~~
- 477

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- (iii) In accordance with Subsection 73-2-1(4) and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall make rules to establish standards for a written plan under this Subsection (2)(f) that:
- 480 (A) determines the reasonable future water requirement of the public for a public water supplier; and  
482 (B) a public water supplier shall complete to demonstrate compliance with this Subsection (2)(f).
- 484 (iv) The state engineer shall present rules developed under Subsection (2)(f)(iii), before the rules take effect, to:
- 486 (A) if the Legislature is not in session, the Natural Resources, Agriculture, and Environment Interim Committee; or  
488 (B) if the Legislature is in session, the House and Senate Natural Resources, Agriculture, and Environment standing committees.
- 490 (v) The rules that the state engineer makes to establish standards for a written plan in accordance with Subsection (2)(f)(iii) shall include a standard for determining:
- 492 (A) a population estimate, including {~~current population and~~} anticipated population growth, consistent with an estimate or methodology under Title 63C, Chapter 20, Utah Population Committee;  
494 (B) an impact of current and future drought conditions;  
495 (C) an anticipated loss of a water source due to a natural disaster, including an earthquake or a change in climate;  
497 (D) an impact of a water conservation activity described in a public water supplier's water conservation plan described in Section 73-10-32;  
499 (E) the amount of water a public water supplier needs per capita; and  
500 (F) any other factor relevant to establishing the reasonable future water requirement of the public for a public water supplier.
- 502 (g) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection (2)(e)(vii) applies if:
- 504 (i) the public water supplier submits a change application under Section 73-3-3; and  
505 (ii) the state engineer approves the change application.
- 506 (h) Saved water does not retain the protection of Subsection (2)(e)(xii) and any period of nonuse for saved water begins to run the day on which:
- 508 (i) the underlying water right that serves as the basis for the saved water is declared by court decree to have been lost due to forfeiture under this section; or

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- 510 (ii) the title of a right to saved water segregated under Section 73-3-27 is conveyed independent of the  
underlying water right.
- 512 (3)
- (a) The state engineer shall furnish a nonuse application form requiring the following information:
- 514 (i) the name and address of the applicant;
- 515 (ii) a description of the water right or a portion of the water right, including the point of diversion,  
place of use, and priority;
- 517 (iii) the quantity of water;
- 518 (iv) the period of use;
- 519 (v) the extension of time applied for;
- 520 (vi) a statement of the reason for the nonuse of the water; and
- 521 (vii) any other information that the state engineer requires.
- 522 (b)
- (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a  
week for two successive weeks:
- 524 (A) in a newspaper of general circulation in the county in which the source of the water supply is  
located and where the water is to be beneficially used; and
- 526 (B) as required in Section 45-1-101.
- 527 (ii) The notice shall:
- 528 (A) state that an application has been made; and
- 529 (B) specify where the interested party may obtain additional information relating to the application.
- 531 (c) An interested person may file a written protest with the state engineer against the granting of the  
application:
- 533 (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
- 535 (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- 537 (d) In a proceeding to determine whether the nonuse application should be approved or rejected, the  
state engineer shall follow Title 63G, Chapter 4, Administrative Procedures Act.
- 540 (e) After further investigation, the state engineer may approve or reject the application.
- 541 (4)
- (a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of  
time not exceeding seven years if the applicant shows a reasonable cause for nonuse.

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- 544 (b) A reasonable cause for nonuse includes:
- 545 (i) a demonstrable financial hardship or economic depression;
- 546 (ii) a physical cause or change that renders use beyond the reasonable control of the water right owner  
so long as the water right owner acts with reasonable diligence to resume or restore the use;
- 549 (iii) the initiation of water conservation or an efficiency practice, or the operation of a groundwater  
recharge recovery program approved by the state engineer;
- 551 (iv) operation of a legal proceeding;
- 552 (v) the holding of a water right or stock in a mutual water company without use by a water supply entity  
to meet the reasonable future requirements of the public;
- 554 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an  
existing, approved water management plan; { or }
- 556 (vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the  
applicant submits, with the application, a specific plan to resume full use of the water right by  
replacing, restoring, or improving the equipment { ; or }
- 560 ~~{(viii) the non-diversion of water under a water right if the water right is leased by, under agreement  
with, or acknowledged in writing by a qualified entity for the purpose of: }~~
- 563 ~~{(A) benefiting the Great Salt Lake; or }~~
- 564 ~~{(B) complying with an interstate water compact ratified by the state. }~~
- 565 (5)
- (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant  
by mail or by a form of electronic communication through which receipt is verifiable, of the date  
when the nonuse application will expire.

568 (b) An applicant may file a subsequent nonuse application in accordance with this section.

563 **Section 5. Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

565 **Section 6. Coordinating H.B. 439 with S.B. 284.**

If H.B. 439, Water Planning Amendments, and S.B. 284, Local Land Use Modifications,  
both pass and become law, the Legislature intends that, on May 6, 2026:

(1) Subsection 10-20-912(8) enacted in S.B. 284 be amended to read:

"(8)(a) A municipality may not impose an exaction for a water interest if:

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(i) the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public; or

(ii) the municipality or the municipality's culinary water authority does not have a written plan in accordance with Subsection (8)(b).

(b) Beginning on January 1, 2028, a municipality shall determine the municipality's water interests needed to meet the reasonable future water requirement of the public by completing a written plan described in Subsection 73-1-4(2)(f)."; and

(2) Subsection 17-79-813(8) enacted in S.B. 284 be amended to read:

"(8)(a) A county may not impose an exaction for a water interest if:

(i) the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public; or

(ii) the county or the county's culinary water authority does not have a written plan in accordance with Subsection (8)(b).

(b) Beginning on January 1, 2028, a county shall determine the county's water interests needed to meet the reasonable future water requirement of the public by completing a written plan described in Subsection 73-1-4(2)(f).".

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